



Shaunna Sullivan / Principal
Emily Mouton / Associate

June 7, 2007



State Water Resources Control Board
c/o Elizabeth Miller Jennings
Office of Chief Counsel
1001 I. Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100

Via: California Overnight

*RE: Cease and Desist Orders Against Individual Property Owners and
Residents in the Los Osos/Baywood Park Prohibition Zone*

State Board Members:

This is a petition for review pursuant to *California Water Code section 13320* of all actions and/or refusals to act by the Regional Water Quality Control Board, Central Coast Division (hereinafter "RWQCB"), related to the issuance of Cease and Desist Orders ("CDOs") against CHARLES E. WILKERSON and NORMA WILKERSON and other individual property owners and residents in the Los Osos/Baywood Park Prohibition Zone on or before the RWQCB hearings held on January 22, 2007 and May 10, 2007. The challenged actions/inactions, hereinafter referred to as the "Enforcement Actions", commenced with the random selection of individual property owners in or around October 2005, and continued through to the hearings held on May 10, 2007, including completion of agenda item numbers 3, 4, 5, and 6 (including any testimony and evidence presented in defense of the CDOs issued against William Moylan and Beverley DeWitt Moylan), and issuance of CDOs against CHARLES E. and NORMA WILKERSON on May 10, 2007 (hereinafter "the May hearings").

This appeal, and the legal authorities, arguments, and/or evidence presented herein, also applies to the other 45 randomly-selected individuals who have been targeted by the RWQCB for enforcement in that such individuals are entitled to have the testimony and evidence of the December 14 and 15, 2006, January 22, 2007 and May 10, 2007 hearings incorporated by reference into the administrative record for their own issued enforcement orders. The RWQCB's own directive provided, in pertinent part:

"Any person named in a proposed Cease and Desist Order may, upon a showing of property-specific relevance and materiality and with the approval of the Chair, incorporate by reference any testimony offered by other persons named in proposed cease and desist orders... Individuals named in proposed Cease and Desist Orders will be encouraged to incorporate testimony from other individual proceedings that is relevant and material to the individual proceedings into the record of such individual proceedings in order to expedite the hearing process (*i.e.*, do not repeat testimony from other parties."

Therefore, this appeal and all supporting documents must be included as evidence in the administrative record of each of the other 45 randomly selected persons and/or entities, including, but not limited to, Alan Martyn, Jacqueline Martyn, Rhian Gulassa, John DerGarabedian, Jan DerGarabedian, Cinthea T. Coleman, Laurie McCombs, Antoinette Gray Payne, Bruce Payne, Edwin I. Ingan, June Q. Ingan, Clint Koch, Christopher Allebe, E.E. Allebe, Charles E. Wilkerson, Norma Wilkerson, CDO Recipients #1040, Julie Miller, and Lawrence Kleiger.

1. PETITIONERS:

Petitioners are:

(1) CHARLESE. WILKERSON and NORMA WILKERSON, individuals who were issued CDOs at the May 10, 2007 hearing before the RWQCB;

(2) The Prohibition Zone Legal Defense Fund, a.k.a. Citizens for Clean Water (hereinafter "PZLDF"), a currently unincorporated association, in its representative capacity on behalf of the individuals and entities threatened, targeted, and/or issued CDOs and/or Cleanup and Abatement Orders (hereinafter "CAOs" or "Settlement Agreements"); and

(3) The Los Osos Community Service District (hereinafter "LOCSO"), a designated party in the enforcement proceedings.

All parties will be hereinafter referred to as "Petitioners" or "designated parties". Any and all service of documents pertaining to this Appeal should be addressed to each of the Petitioners identified on Exhibit "A" and to their attorney of record, Shaunna Sullivan

of Sullivan & Associates, A Law Corporation, 2238 Bayview Heights Drive, Suite C, Los Osos, California 93402. All Petitioners agree to accept service of any and all documents by U.S. Mail only, both to their address and to their attorney's address. However, the designated parties do request that courtesy copies be provided by email and facsimile.

2. DESCRIPTIONS AND DATES OF ACTIONS FOR REVIEW:

Petitioners are appealing the following actions and/or determinations of the RWQCB:

- (1) Issuance of CDOs against CHARLES and NORMA WILKERSON on May 10, 2007 for purported illegal discharges of waste into the Los Osos/Baywood Park Prohibition Zone, copies of which have been included herein and attached as Exhibit "1";
- (2) Each of the specific findings, decisions, and/or orders issued by the RWQCB set forth in Exhibit "B". Documents related to the challenged orders listed in Exhibit B were previously provided to the SWRCB in the appeal dated January 16, 2007, SWRCB/OCC File A-1825 and A-1825(a), as Exhibits 5-A and 6 and are incorporated herein by reference;
- (3) All rulings, actions and/or determinations of the RWQCB from September 2005 through the May 10, 2007 hearings regarding the Enforcement Actions, including, but not limited to, the hearings, procedures, submission of or exclusion of evidence, objections, and testimony. Documents related to this issue were previously provided to the SWRCB in the appeal dated January 16, 2007, SWRCB/OCC File A-1825 and A-1825(a), as Exhibit 5;
- (4) All rulings, actions and/or determinations of the RWQCB from September 1, 2005 to August 4, 2006 regarding enforcement actions culminating in individual enforcement actions which will be more specifically identifiable once the administrative record is made available. Documents related to this issue were previously provided to the SWRCB in the appeal dated January 16, 2007, SWRCB/OCC File A-1825 and A-1825(a), as Exhibit 6; and
- (5) Enforcement against individual property owners under Resolutions 83-13, 83-12, 84-13 and any other Water Quality Control Basin Plan provisions or resolutions purportedly prohibiting existing individual property owners from utilizing existing septic tanks from December 1, 2006 to the present.

Documents related to this issue were previously provided to the SWRCB in the appeal dated January 16, 2007, SWRCB/OCC File A-1825 and A-1825(a), as Exhibit 7.

3. REASONS FOR APPEAL INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

1. The acts of the RWQCB against Petitioners and other randomly selected real property owners in Los Osos have violated Petitioners' due process, equal protection and other constitutional rights as follows:

(a) The Prosecution Team failed to meet each and every deadline required under RWQCB notices, including but not limited to, the deadline for submission and service of supporting documents and evidence, the deadline for submission and service of rebuttal evidence, and the deadline for submission and service of written responses and objections to Petitioners' evidence;

(b) The RWQCB and Prosecution Team repeatedly failed to serve Petitioners with proper notice of the findings, decisions, hearings, proceedings, and proposed and final orders related to the enforcement action, and improperly forced Petitioners to rely upon untimely and often corrupted postings on the RWQCB website for information regarding the enforcement actions against them;

(c) The RWQCB improperly denied each and every properly submitted discovery, subpoena or deposition request by Petitioners;

(d) The enforcement actions violate Petitioners' 6th Amendment right to confront their accusers in that the RWQCB improperly denied and quashed the deposition subpoenas for indispensable witnesses;

(e) The CDOs and CAO agreements have improperly been repeatedly and substantially modified prior and subsequent to their being ordered at RWQCB hearings, denying Petitioners proper notice and unfairly injuring and confusing Petitioners;

(f) Respondent RWQCB had improperly disallowed the votes and voices or participation of the two local RWQCB board members in any stage of the enforcement action;

(g) The CDOs, which can affect livelihood of some Petitioners pursuant to *Government Code* §4477, which bars CDO recipients from providing goods or services to the State of California and deprives Petitioners of life, liberty and property without due process;

(h) The enforcement actions constitute an unconstitutional taking of property without compensation;

(i) The RWQCB has refused to provide Petitioners with the assistance required under *Water Code* §§ 13301.1 and 13291.5;

(j) The RWQCB has improperly refused to consider the issues or enter into the record the arguments and pleadings filed in the case of *Alan Martyn, et al. v. Regional Water Quality Control Board, et al.*, San Luis Obispo Superior Court Case No. CV 060992;

(k) The enforcement actions constitute a violation of Petitioners' civil rights and liberties under the State and Federal Constitutions and Section 1983 of Title 42 of the United States Code;

(l) The RWQCB failed to comply with rules of segregation of powers during the hearings, as the RWQCB acted as inquisitor, prosecutor, witness, judge and executioner;

(m) The RWQCB's change in the makeup of the Prosecution Team did not relieve the bias and unfairness of the RWQCB's enforcement actions;

(n) The RWQCB cannot offer an unbiased forum for the hearings, as is apparent from the administrative record, including statements made in the LOCSD's Administrative Civil Liability Hearing;

(o) RWQCB regulations do not contain proper checks and balances for the protection of individual rights against Respondents' prosecution of individuals for alleged violations of discharge prohibitions that are well beyond the scope of individual control;

(p) The RWQCB improperly refused to allow relevant evidence into the record to support Petitioners claims and sustained untimely objections by the PROSECUTION TEAM disallowing evidence;

(q) The RWQCB did not allow sufficient time for each Petitioner to present their testimony, arguments, and evidence;

(r) The RWQCB inaccurately represented the terms of the purported "Approved Settlement Agreement and Order", failed to disclose that the agreement was, in fact, a CAO, improperly changed the terms of the purported agreement before and after conclusion of the December 14 and 15, 2006 hearings, and improperly denied Petitioners the opportunity to agree to the terms or to consult with an attorney prior to agreeing to the purported Settlement Agreement;

(s) The RWQCB improperly conducted settlement negotiations in a public open forum and unfairly denied Petitioners any right to discuss the purported settlement agreement unless they first "agreed" to accept the settlement order in whatever form was subsequently approved by the RWQCB;

(t) The RWQCB and Prosecution Team improperly represented the purported Settlement Agreement as affording a waiver of any mandatory fines, when in actuality such language was never included and that language which was favorable to Petitioners was deleted from the purported "Approved Settlement Agreement and Order";

(u) Petitioners who have been and are being coerced into signing a CAO agreement have been subject to harassment and acted under duress, and any written or oral agreement to settle is voidable and not binding on these Petitioners;

(v) The purported settlement agreements are void for lack of consideration as the RWQCB has insisted that it reserves the right to impose civil liability and penalties to the fullest extent allowed by law, and therefore the agreement has not settled anything;

(w) The order of presentation and issuance of CDOs after each set hearing at RWQCB hearings denied Petitioners the right to incorporate later testimony by reference;

(x) Petitioners have been unfairly denied the right to continuances;

(y) The RWQCB violated Petitioners' rights in refusing to take any additional information, comments, documentation, or discovery under submission after November 15, 2006. While that date served as the deadline for responding to the Prosecution Team's evidence prior to the first round of hearings, continuous and numerous violations of due process, equal protection, and other constitutional rights by the RWQCB and Prosecution Team have occurred since that date, which Petitioners demand be included

in the administrative record;

(z) The RWQCB improperly relied on testimony from the PROSECUTION TEAM, including the PROSECUTION TEAM attorney, with no personal knowledge or evidence to support their testimony;

(aa) The RWQCB improperly allowed, and continues to allow, inadmissible settlement negotiations to be introduced into evidence;

(bb) The RWQCB actions violate Petitioners right to equal protection in that all residents subject to enforcement in Los Osos/Baywood Park are not being treated equally;

(cc) The RWQCB and Prosecution Team's actions have made improper distinctions based on gender, marital status, and age in violation of Petitioners' right to equal protection;

(dd) The unprecedented RWQCB enforcement actions amount to inequitable enforcement of the law;

(ee) Petitioners, citizens of Los Osos, and the members of surrounding communities have not been treated equally in violation of Petitioners' right to equal protection;

(ff) Respondent PROSECUTION TEAM improperly withheld the names of targeted individuals, preempting any consolidated and joint defense by Petitioners;

(gg) The CDOs and CAOs invade Petitioners' right to privacy in unreasonably requiring Petitioners to notify the Executive Officer and Staff PROSECUTION TEAM in writing the "name of any new occupant of the site within 30 days after the new occupant takes occupancy"; and

(hh) Petitioners were denied the right to have a non-attorney representative assist in the presentation of their defense, as is typically allowed in administrative hearings, in violation of their equal protection rights.

2. Petitioners contend the acts of the RWQCB were arbitrary, capricious and lacking in evidentiary support which have and will continue to unjustly and selectively penalize Petitioners for conditions beyond their control as follows:

(a) The RWQCB does not have the authority to issue CDOs or CAOs to Petitioners in their individual capacity under these circumstances;

(b) The CDOs and CAOs are not intended to be used as an enforcement vehicle against vast numbers of individuals in a community;

(c) Respondents issued CDOs and CAOs attempt to exact an impossibility from Petitioners resulting in unjust and unconstitutional actions;

(d) Respondents wrongfully issued CDOs and CAOs against individual residents and home and business owners in Los Osos when CDOs and CAOs are clearly designed and intended for industrial and commercial dischargers;

(e) Respondents have provided absolutely no site-specific evidence regarding violations by any individual property owners or individual septic systems, and have failed to prove that any Petitioner has discharged or is discharging in violation of a valid prohibition or is causing harm to the state's waters;

(f) The enforcement actions violate *Water Code* §13351 in that the RWQCB has made no effort to show, with regard to any individual Petitioner, the "nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require";

(g) Respondents do not have the authority to issue CDOs or CAOs against property owners whose sewage disposal systems existed prior to the adoption of Resolution 83-13 and the waste discharge prohibition of the Water Basin Plan;

(h) Respondents are mandating a community wastewater treatment and collection system which will violate the RWQCB's own interpretation of Resolution 83-13. The RWQCB and Prosecution Team interpret Resolution 83-13 to prohibit any and all discharges into the basin from individual or community systems, and therefore, the community system mandated by the CDOs and CAOs is no more legal under 83-13 than individual septic tanks;

(i) Petitioners own and/or occupy homes and businesses within the Prohibition Zone with legally permitted and properly working septic systems, and Petitioners were not advised at any time prior to the purchase of their homes and businesses that the septic systems were allegedly illegal or that their use had to be discontinued;

(j) CAOs and/or the instant CAO agreements were not intended to be used as an enforcement mechanism without a showing that pollution exists from each charged individual's system and that the order for cleanup and abatement can actually be met by the individual;

(k) CDOs and CAOs are improper enforcement vehicles for alleged violations of the Los Osos/Baywood Park Prohibition Zone because there is nothing any of Petitioners can legally do to ensure construction, completion and connection to a community system estimated to cost well over \$100 million on or before January 1, 2011;

(l) Respondents have failed to consider the economic justice of their actions and failed to show any means, by Petitioners, of complying with the deadlines mandated by the CDOs and CAO agreements, other than by vacating their homes and businesses;

(m) The RWQCB has failed to take into consideration remedies available through allowing Assembly Bill 2701 to progress, and have failed to "stand down" or take into consideration less onerous and less punitive remedies as required by AB 2701;

(n) Respondents actions are punitive in nature, holding Petitioners responsible for actions beyond their control, and are not taken in furtherance of improving the quality of the water basin;

(o) The RWQCB, through a Memorandum of Understanding, delegated the responsibility of maintaining the septic systems in Los Osos to the County of San Luis Obispo, and Petitioners should not be held accountable or subjected to punitive enforcement actions for the failure of the RWQCB and County to construct a wastewater collection and treatment system;

(p) Respondents have failed to follow its own *Water Quality Enforcement Policy* in that it has failed to begin with lower levels of enforcement, failed to evaluate the economic impacts of the proceedings, and failed to consider other forms of enforcement;

(q) Respondents have acted in bad faith and with unclean hands in this enforcement action in violation of an agreement in October 2005 to "stand down" and allow the process of AB 2701 to proceed;

(r) Respondents have failed to mitigate the damages caused by the enforcement actions, and in fact, took actions which exacerbated any ability to meet their discharge prohibitions by revoking funding to assist in construction of a community wastewater collection and treatment system and imposition of additional fines;

(s) The issuance of CDOs and CAOs in this instance violates the principles of environmental justice as set forth in *Government Code* §65040.12(e) which provides for "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies" by forcing Petitioners to bear the burden of challenging the enforcement actions for the benefit of all residents, homeowners and business owners in the Los Osos/Baywood Park Prohibition Zone;

(t) Respondents have improperly failed and refused to provide any guidance or assistance, in violation of *Water Code* §§13291.5 and 13301.1, regarding available alternatives for coming into compliance with the discharge requirements, short of ceasing all uses of Petitioners' residential and commercial properties, and moving out of the community;

(u) Respondents have failed and refused to consider reasonable enforcement alternatives other than CDOs and CAOs against individuals;

(v) The CDO improperly and inaccurately states, without any evidence or support, that "The discharger has incurred little or no cost since then to comply with the prohibition";

(w) Respondents have failed to show that the CDOs and/or CAOs are necessary or that their issuance will remedy any perceived illegal discharge;

(x) Respondents have not taken into consideration prior pumping of individual septic systems in their prosecution of individuals, and many of Petitioners have had their septic tanks pumped within the last six months and have evidence of a properly functioning system;

(y) The test wells used by the Prosecution Team to support the finding of illegal discharge from Petitioners' individual septic systems are constructed in an entirely different manner than individual septic systems, and any results from these test wells are tainted, inaccurate, and violate the RWQCB's own rules and regulations;

(z) The monitoring well data relied on by Respondents is inconsistent, not scientifically valid and based upon faulty, uncased or improper wells;

(aa) In the enforcement hearings in April 2006, Petitioners demonstrated a far greater knowledge of proper septic tank maintenance and functioning and a greater understanding of the water basin than the Prosecution Team, and in fact, corrected many of the Prosecution Team's misconceptions;

(bb) The RWQCB and Prosecution Team have failed to provide any admissible evidence to support their claims that these 45 targeted individual property owners or residents of Los Osos discharged waste in violation of any enforceable order or resolution, and have, instead, improperly used anecdotal analysis and evidence from test wells constructed in an entirely different manner; and

(cc) The CDOs and CAOs are vague and ambiguous in requiring approval of a benefits assessment by July 1, 2008 by the County of San Luis Obispo, because it is the voters, not the County, who must approve any benefits assessment vote.

3. The acts of Respondents threatened and continue to threaten the Petitioners' life, liberty and property, and may cause the recipients loss of employment and work as *Government Code* section 4477 disallows CDO recipients from providing goods and services to the State of California.

4. Through their enforcement actions, the RWQCB is improperly ordering state-mandated costs on individuals, the LOCSD and the community of Los Osos without providing the funds to meet those costs in violation of Article XIII B, Section 6 of the California Constitution.

5. The acts of Respondents constitute illegal electioneering as Respondents have been improperly motivated in an attempt to force the Petitioners and others to vote favorably on a 218 bond measure for assessments to construct a wastewater treatment system.

6. The RWQCB has arbitrarily and capriciously refused any and all challenges to the legality and constitutionality of the discharge prohibition underlying these enforcement actions set forth in Resolution 83-13.

Petitioners reserve the right to provide additional arguments and evidence to support this Petition and request leave to amend to include such additional arguments and evidence as necessary.

5. MANNER AGGRIEVED:

The RWQCB's illegal actions have resulted in the improper issuance of CDOs against Petitioners while the large majority of remaining residents and property owners in Los Osos remain unharmed and unthreatened. Petitioners have been denied the opportunity to depose and obtain information from the most significant witness regarding the issuance of the cease and desist orders. Petitioners have also exerted an enormous amount of time, effort, and money in preparation for the April 2006, May 2006, November 2006, December 2006, January 2007 and May 2007 hearings, despite the complete failure of the RWQCB to properly notice the hearings, produce their evidence, and meet their self-established deadlines. Petitioners were also not allowed to introduce relevant documents into evidence, and were denied their right to incorporate by reference the testimony of other individuals subject to the CDOs. The wrongs committed by the RWQCB, resulted in serious and numerous violations of Petitioners' due process, equal protection, 6th Amendment, privacy, and other constitutional rights. These violations have caused immense and immeasurable distress amongst Petitioners and dissension in the community since first proposed in September 2005, and Petitioners contend that the Enforcement Actions constitute an attempt to impose the total cost of a community wastewater and collection treatment system on individual property owners and a portion of the Los Osos community who constitute only a fraction of the people of the State of California who will benefit from cleaner water. Petitioners further contend that such Enforcement Actions are improperly and illegally motivated to coerce a vote in favor of a 218 bond measure.

6. SPECIFIC ACTION REQUESTED:

- A. DISMISS ALL ENFORCEMENT ACTIONS AND VACATE ALL RULINGS, ORDERS, CDOs, and/or CAOs, and ENJOIN THE RWQCB FROM PURSUING FURTHER ENFORCEMENT AGAINST PETITIONERS.**

Petitioners request that the SWRCB issue a ruling which vacates all CDOs dated May 10, 2007 against Petitioners named herein. Petitioners contend that the former CDOs and CAO agreements issued against Petitioners and other residents and property owners of Los Osos must be vacated and demand that any future actions be stayed or applied equally to each individual resident and/or property owner in the Los Osos/Baywood Park Prohibition Zone who is actually shown to have illegally discharged waste into the water basin.

Petitioners further request that the SWRCB permanently enjoin the RWQCB from pursuing any individuals and/or businesses owning property or living in the Los Osos/Baywood Park Prohibition Zone and that the SWRCB dismiss any and all pending actions against individuals and/or businesses owning property or living the Los Osos Prohibition Zone, inasmuch as the RWQCB is attempting to use the threat of CDOs and CAOs to coerce a county vote approving assessments for a new sewer system. Petitioners contend that the RWQCB's use of the CDOs and/or CAOs against them individually is unprecedented and improper, and request that such enforcement actions immediately cease.

Petitioners further request an order requiring the RWQCB to immediately prepare the administrative record for all individual Enforcement Actions by the RWQCB from September 2005 to the present related to the Los Osos/Baywood Park Prohibition Zone. The RWQCB has negligently failed or refused to compile the administrative record in violation of *California Code of Civil Procedure* §1094.6(c) although several prior requests for the record have been served by Petitioners.

B. OR IN THE ALTERNATIVE, HOLD ALL ENFORCEMENT ACTIONS, CDOs, AND CAOs IN ABEYANCE.

If not permanently enjoined, Petitioners request any and all Enforcement Actions by the RWQCB against Petitioners or the other randomly selected individuals be enjoined until such time, if ever, the project being developed by the County of San Luis Obispo, under the auspices of AB 2701, is deemed abandoned, or otherwise refused by the County of San Luis Obispo or any other lead agency to proceed. Petitioners further request that the CDOs issued against them, if not vacated, be held in abeyance, until after the RWQCB has completed its threatened process of pursuit against all residents' of Los Osos and issuance of same or similar CDOs or CAOs. In the event the RWQCB insists on continuing prosecuting the individual property owners and residents of Los Osos prior to abandonment of the AB 2701 process, Petitioners further request that they be afforded a reasonable opportunity to take the deposition of Roger Briggs and any other material witness, that all relevant documents, testimony and evidence submitted by Petitioners be made part of the record, and that Petitioners be granted a new hearing after the RWQCB has protected the due process and equal protection rights of Petitioners and met their burden of proving illegal discharges of pollution from each individual septic system as required by *Water Code* §13280.

8. SERVICE BY PETITIONER:

By copy of this letter mailed the date hereof, the RWQCB has been served by mail with this petition.

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9. REQUEST FOR RECORDS:

Petitioners first requested that the RWQCB administrative record be prepared on November 17, 2006, and have made several additional requests since that date. To date, the RWQCB has failed to prepare such record in violation of *Code of Civil Procedure* §1094.6(c). By copy of this letter mailed the date hereof, Petitioners hereby again request that the RWQCB prepare the RWQCB administrative record.

Very truly yours,

Sullivan & Associates
A Law Corporation



Emily Mouton

EJM

encl.

cc: RWQCB, Central Coast Division

EXHIBIT "A"

Charles and Norma Wilkerson P.O. Box 1222 Morro Bay, CA 93443-1222 (805) 528-3355	via U.S. Mail only
Prohibition Zone Legal Defense Fund c/o Gail McPherson 2582 Pecho Valley Road Los Osos, CA 93402 (805) 534-1913	<u>ronmcpherson@earthlink.net</u>
Los Osos Community Services District c/o Annajane L. Hugh, General Manager 2122 9 th Street Los Osos, CA 93402 (805) 528-9370	<u>ahugh@losososcscsd.org</u>

Representing Petitioners: Sullivan & Associates, a Law Corporation 2238 Bayview Heights Drive, Suite C Los Osos, CA 93402 (805) 528-3355	<u>sullivanlaw@charter.net</u> fax (805) 528-3364
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EXHIBIT "B"

No.	CHALLENGED ORDERS, ACTIONS, INACTIONS, AND RULINGS	Document Date
1	Executive Director Briggs to LOCSD Re: Individual Enforcement Actions (referenced in 1/5/06 hearing transcripts p. 418, line 21)	1/6/2005
2	Board & Executive Director Briggs Testimony Re: Directions and Plans for Execution of Individual Enforcement Orders: referenced during hearing ACL Complaint No. R3-2005-1037 Re: LOCSD, Los Osos Wastewater Project SLO Co-Transcripts Pg 412-420 (also posted on web site as Prosecution Staff's legal Rebuttal, dated April 19, 2006 - attachment to legal responses)	1/5/2006
3	Executive Director Briggs Follow Up Memo to RWQCB: Enforcement Actions Re: Onsite Disposal Systems - Assures Board is in process - preparing individual enforcement following LOCSD ACL Order No. R3-2005-1037 decision Included in Chairman's Revised Hearing Notices - Attachment 2 (posted April 24, 2006)	1/18/2006
4	Executive Director Briggs' Proposed Cease and Desist Order for Violation of Basin Plan Prohibition; Order to Provide Information Under Water Code Section 13267 (signed by Briggs, Enclosures - Hearing Notice, Staff Report, CDO, Initial List of Prosecution Staff Documents)	1/27/2006
5	Notice of Public Hearing Concerning Cease and Desist Order for Certain Dischargers Within the Prohibition Zone (conduct of hearings) M. Thomas	1/27/2006
6	Chairman's Supplemental Notice - clarification of Scope of Permissible Testimony for Hearing March 23 and 24, 2005 (J. Young) ("The propriety of the prohibition is not an issue at this hearing")	2/15/2006
7	Chairman's Revised Hearing Notice; Pre-hearing Order Establishes a New Hearing Date, New Dates for Submittal of Documents, and Water Board's Ruling Regarding All Submittals as of February 24, 2006	2/28/2006

8	Chairman's Response to Requests for Designated Party Status (Denied) and Requests Individual Hearings (Denied)	3/6/2006
9	Chairman's Response to Requests for Designated Party Status, Individual hearings, and Extension of Document Submittal Deadlines	3/29/2006
10	Chairman's Ruling - CDO Against Individuals in Prohibition Zone - Response to Requests 1. Requests for individual hearings 2. Requests for time extensions to submit testimony 3. Request for a new hearing date 4. Requests to be heard first 5. Requests for a subpoena for Economic and Business advisors to the board	4/17/2006
11	Chairman's Order of Proceedings - April 28, 2006 Consolidated Hearings, Posted April 24, 2006 Chairman's Notice of Revised Cease and Desist Orders Against Individual Property Owners - Order of Proceedings for April 28, 2006 Hearing - attached Consolidated Proceedings for All CDO April 28, 2006	4/21/2006
12	Chairman's Notice of Revision to Proposed Cease and Desist Order (posted April 24, 2006) Notice of Revision to Proposed CDO-R3-2006-1000 through R3-2006-1050 (APCD objections - Prosecution removed bi monthly pumping <u>at this time</u> . Reserves amending CDO after they issue.)	undated
13	Chairman's Advisory Team, Designated Parties, Interested Parties, and Media - Scope of Hearing Unchanged (M. Thomas)	4/27/2006
14	Chairman's Order of Proceedings for April 28, 2006 Hearing Order of Proceedings - Consolidated Proceedings for CDO R3-2006-1000 through R3-2006-1041 To Cease and Desist from Discharging Wastes In Violation of a Basin Plan Prohibition Prescribed by the RWQCB, Central Coast Region	4/28/2006
15	All Objections, Rulings, and Determinations During April 28, 2006 Hearing Designated Parties Including LOCSD and Individual Cease and Desist orders. Transcripts Included	4/28/2006

16	Chairman's Notice of Continued Hearings (posted May 5, 2006) Notice of Continued Proceedings May 11 and 12, 2006 Hearing Postponed - Status Conference on May 11, 2006 at 10:00 a.m. Chairman granted Prosecution Team's Request for Continuance to Seek New Prosecution Counsel Based On LOCSD Objection and Motion to Dismiss all CDOs April 28, 2006, citing <i>Quintero v. City of Santa Ana</i> (2003) 114 Cal.App.4th 810 and <i>Morongo Band of Mission Indians v. SWRCB</i> , Sac. Co. Superior Court Case No. 04CS00535 (January 18, 2006)	5/5/2006
17	All Objections, Rulings and Determinations from Chairman's Status Conference May 11, 2006 Audio files - Item 1.2 and 6a (posted May 23, 2006)	5/11/2006
18	Chairman's Order Re: Submittal of Briefs (Written Arguments) (posted May 22, 2006) New Counsel R. Sato introduced Briefing Schedule Re: Presentation of Prosecution Case on April 28, 2006 - Briefs due 5:00 p.m. June 23, 2006, Response to Briefs due 5:00 p.m. July 21, 2006	5/18/2006
19	Chairman's Order Re: Non-Responders and Representation for Designated Parties (posted June 29, 2006) Order Re: 1. Mailings to Designated Parties, and 2. Process for Authorizing Representatives for Designated Parties	6/28/2006
20	Chairman's Preliminary Notice of Ruling (posted August 4, 2006) Order regarding: Notice of Ruling-Preliminary Notice of Evidence Supporting The Issuance of Individual Cease and Desist Orders for Residents of Los Osos/Baywood Park.	8/4/2006
21	Notice of Public Hearing (Notice of Panel in Absence of a Quorum) November 2, 2006 and November 9, 2006 (M. Thomas) Posted September 12, 2006	9/7/2006

22	Untimely Prosecution Staff's Replacement Documents (posted/available September 11, 2006) a. Cover letter dated September 8, 2006 b. Staff Report (prepared August 29, 2006) c. Attachment 1 Map (revised April 3, 2006) Attachment 2 Individual Cease and Desist Order template (updated) Attachment 3 Prosecution Staff Document List (additions since April 19, 2006)	9/8/2006
23	Revised Notice of Public Hearing - New Hearing Dates December 14 and 15, 2006 Notice of Extension of Document Submittal Dates (M. Thomas)	10/16/2006
24	Notice of Chairman's Ruling Regarding Subpoena Documents Submitted On October 4, 2006	10/17/2006
25	Prosecution Team's Notice of Proposed Settlement (Posted November 7, 2006)	10/30/2006
26	Prosecution Team's Notice of Additional Settling Dischargers (Posted November 13, 2006)	11/9/2006
27	Notice of Proposed Settlement Agreement, Version 10/31/2006; Continuance of Hearings for Designated Parties Who Have Agreed to Settle; and Order of Proceedings for Public Hearing on Dec. 14 and 15, 2006	11/21/2006
28	Notice of Proposed Modified Settlement Agreement, Version 12/1/2006 cc to R3-2006-1005, 1007, 1009, 1012, 1014, 1017, 1019, 1021, 1023, 1024, 1028, 1030, 1033, 1037, 1038, 1040, 1042, 1044, 1046, 1048.	12/6/2006
29	Chairman's Order Regarding Prosecution Team's Objections To Evidence For Hearings On Dec. 14, and 15, 2006	12/8/2006
30	Approved Settlement Agreement and Order (posted December 19, 2006) County Septic Tank Inspection Report & Verification Forms	12/14/2006
31	All Objections, Rulings and Determinations at December 14, 2006 Hearing Re: Individual Cease and Desist Orders R3-2006-1000 through R3-2006-1050	12/14/2006

32	All Objections, Rulings and Determinations at December 15, 2006 Hearing Re: Individual Cease and Desist Orders R3-2006-1000 through R3-2006-1050	12/15/2006
33	Approved Cease and Desist Order R3-2006-1000 through R3-2006-1050 Dated 12/15/2006 (posted December 19, 2006) with Revised County Septic Tank Inspection & Verification Forms	12/15/2006
34	Board Adopted Cease and Desist Orders: Including But Not Limited To: R3-2006-1001 Julie G. Miller, 1002 Cinthea T. Coleman, 1003 Alan and Jacqueline Martyn, 1019 Christopher D. And E.E. Allebe, 1020 Lawrence Kleiger and Julie Miller Living Trust, 1034 Rhian Gulassa, 1047 Edwin I. and June Q. Ingan-individually and dba.	Mail date 12/20/2006
35	Chairman's Notice Of Continued Hearing and Notice of Panel Hearing January 22, 2007 and Notice of Settlement (additional approved settlements, procedures of continued hearing, evidence admitted)	12/28/2006
36	Chairman's Notice Correction to Settlement Agreement (2b) Correction to Settlement Agreement "mistakenly omitted important language that would benefit you..."	1/3/2007
37	Settlement Agreement Clarification Letter with Attached Agreements, Including but not limited to: Bruce Payne and Antoinette Grey-Payne, Julie G. Miller, Lawrence Kleiger and Julie Miller Living Trust, Clint Koch, Laurie McCombs, John and Jan DerGarabedian a.k.a. Designated Party #1029, Designated Party #1040, Barry Carney and Katherine H. Thomas, Jim and Valerie Darnell-Speegle Family Trust. Also in 2(a) Pg 12-19 Original Pro-Forma	1/3/2007
38	Chairman's Notice of Continued Hearings (date corrected) Posted January 16, 2007	1/9/2007
39	All Objections, Rulings and Determinations at January 22, 2007 Hearing Re: Individual Cease and Desist Orders R3-2006-1000 through R3-2006-1050	1/22/2006
40	All Objections, Rulings and Determinations at May 10, 2007 Hearing Re: Individual Cease and Desist Orders R3-2006-1000 through R3-2006-1050, including Agenda Items 3, 4, 5, and 6	5/10/2007



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region



Arnold Schwarzenegger
Governor

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

May 24, 2007

CERTIFIED MAIL 7006 0100 0000 1777 6099

Charles and Norma Wilkerson
P.O. Box 1222
Morro Bay, CA 93443-1222

Dear Mr. and Mrs. Wilkerson:

CEASE AND DESIST ORDER NO. R3-2006-1008 FOR 1273 12TH STREET, LOS OSOS-BAYWOOD PARK

The Central Coast Water Board adopted your Cease and Desist Order No. R3-2006-1008 (CDO) on May 10, 2007. Please find your adopted CDO attached.

In summary, the CDO requires you to cease your septic system discharge within 60 days of the availability of a community wastewater system connection. However, if the County of San Luis Obispo's benefit assessment is not approved by July 1, 2008, then you must cease your septic system discharge by January 1, 2011. If the benefits assessment is approved but then there is material cessation of progress on the community wastewater system, you must cease your septic system discharge by January 1, 2011, or within two years of receiving notice of material cessation from us, whichever is later. Also, by August 10, 2007, you are required to have your septic system pumped out and inspected by a qualified contractor, submit a report of such inspection, and then make any necessary repairs to your septic system.

If you have any questions, please contact Matt Thompson at mthompson@waterboards.ca.gov or (805) 549-3159.

Sincerely,

Michael J. Thomas
Assistant Executive Officer

Enclosure: Adopted Cease and Desist Order No. R3-2006-1008

S:\WDR\WDR Facilities\San Luis Obispo Co\Los Osos\enforcement\Individual CDOs\Adopted CDOs\Transmittal of Adopted CDO (Wilkerson).doc

California Environmental Protection Agency



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EXHIBIT 1 page 1 of 10

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

CEASE AND DESIST ORDER NO. R3-2006-1008

Requiring

CHARLES AND NORMA WILKERSON
OWNER AND OCCUPANT
1273 12TH STREET, LOS OSOS
APN 038-142-017
SAN LUIS OBISPO COUNTY
TO CEASE AND DESIST FROM DISCHARGING WASTES
IN VIOLATION OF A BASIN PLAN PROHIBITION
PRESCRIBED BY THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL COAST REGION

The California Regional Water Quality Control Board, Central Coast Region (hereafter Water Board), finds:

1. Charles and Norma Wilkerson own and operate an on-site wastewater treatment and disposal system (Septic System) at 1273 12th Street (Site) in Los Osos, California. The Site is a residence located within the prohibition zone established by Resolution no. 83-13. The Septic System consists of a septic tank that discharges wastewater to an on-site subsurface disposal facility. Charles and Norma Wilkerson are referred to in this Order as "Discharger."
2. The Site has no wastewater disposal facility other than the Septic System. Waste generated at the Site includes human waste and wastewater from toilets and from domestic activities such as bathing, laundry, dishwashing and disposal of garbage. This waste is discharged to the Septic System. Liquid waste then discharges from the Septic System and eventually to groundwater.
3. The discharge of waste or the threatened discharge of waste from the Septic System violates a prohibition of waste discharge from individual sewage disposal systems set forth in the Water Quality Control Plan, Central Coast Basin (Basin Plan). The Water Board adopted the prohibition on September 16, 1983. The Basin Plan prohibition specifies, in part (page IV-67):
"3. Discharges from individual and community sewage disposal systems are prohibited effective November 1, 1988, in Los Osos/Baywood Park area depicted in the prohibition boundary map included as Attachment "A" of Resolution 83-13".

The prohibition boundary map is contained in Appendix A-30 of the Basin Plan. The Site is within the prohibition area.

4. On January 27, 2006 and February 28, 2006, notice was provided to the Discharger and other affected persons regarding the Water Board's consideration of this Order.
5. Pursuant to AB 2701, as of January 1, 2007, the County of San Luis Obispo (County) is authorized to undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to serve the territory which is subject to the wastewater discharge prohibition imposed by the Central Coast Regional Water Quality Control Board (Water Board) pursuant to Resolution No. 83-13. That territory includes the Site. If the Site is connected to a community wastewater collection and treatment system as contemplated by AB 2701 the Site will comply with the applicable waste discharge prohibition in the Basin Plan
6. On January 22, 2006, in San Luis Obispo, California, a panel of the Water Board held a public hearing and heard evidence regarding this Order.
7. This Order includes monitoring and reporting requirements pursuant to Water Code Section 13267. The Water Board needs the required information in order to assess compliance with the Basin Plan and this Order, and to ensure that pollutant loading within the prohibition area is minimized to the extent possible. The Discharger is required to provide this information because the Discharger is the owner and/or operator of the Septic System. The staff report that accompanied the draft order includes additional evidence in support of this requirement. The Water Board adopted the prohibition in 1983, it became effective in 1988, and the Discharger has incurred little or no costs since then to comply with the prohibition. The burden of any monitoring or reporting required by this Order is reasonable in light of the severe pollution that has resulted from operation of septic systems in the prohibition area, and the long history of violations of the prohibition at the Site.
8. The technical report required by Section A.2.b or 3 (as applicable) is necessary to determine that any alternative to connecting to a community wastewater collection and treatment system meets applicable legal requirements, including the septic system discharge prohibition, and to assess compliance with Paragraph A.1 of this Order.
9. Alternatives proposed to comply with this Order may be subject to permitting requirements, including the requirement to obtain waste discharge requirements. Nothing in this Order relieves the Discharger of the obligation to obtain any necessary permit or waste discharge requirements.
10. This enforcement action is being taken for the protection of natural resources and the environment and as such is exempt from the provisions of the California Environmental Quality Act (Sections 15307, 15308, and 15321, Chapter 3, Division 6, Title 14, California Code of Regulations, "CEQA"). In addition, the Septic System is

May 10, 2007

an existing facility and this Order allows no expansion of use beyond that previously existing so this enforcement action is exempt from the provisions of CEQA (Section 15301, Chapter 3, Division 6, Title 14, California Code of Regulations).

11. Because this cease and desist order applies to a residence, the Water Board finds that any penalties imposed for failure to comply should not exceed \$30 per day, unless specific findings are made by the Water Board to justify an exceedance.

IT IS HEREBY ORDERED, pursuant to Sections 13260, 13267 and 13301 of the California Water Code, that the Discharger shall comply with the following requirements:

A. CESSATION OF DISCHARGE

1. In the event that the County is successful in approving a benefits assessment by July 1, 2008 to finance the construction of a community wastewater collection and treatment system after providing the owners of the subject property with notice and an opportunity to protest the assessment in accordance with Article XIII D of the California Constitution, and, thereafter, the County completes a timely due diligence review for the construction of a community wastewater collection and treatment system, and constructs a community wastewater collection and treatment system in accordance with a schedule approved by the Regional Board;
 - a. The Discharger shall cease all unpermitted discharges (discharges not approved or permitted by the Water Board) from the Septic System no later than 60 days after a community wastewater collection and treatment system is available for connection to the Site;
 - b. After the Water Board provides notice of the expected availability date to the Discharger and no later than 90 days before the expected availability date, the Discharger shall submit the following information, either:
 - i. A statement that the Discharger agrees to connect to the community wastewater treatment plant and sewer system within 60 days after the system becomes available for connection to the Site; or
 - ii. A technical report proposing an alternative method of ceasing all unpermitted discharges from the Septic System. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System within 60 days after the date on which the approved schedule anticipates that the community wastewater collection and treatment system will be available, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste

discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376. In the event that the proposed alternative is not approved by the Water Board, Discharger will be required to cease all unpermitted discharges from the Septic System no later than 60 days after the availability of a community wastewater collection and treatment system is available for connection to the Site in accordance with Paragraph A.1.a.

2. In the event that the benefits assessment is not approved by the County before July 1, 2008, the Discharger shall cease all discharges from the Septic System no later than January 1, 2011 unless the Water Board has approved an onsite system for discharge from the Site by June 30, 2010, the Discharger shall submit a technical report proposing a method of complying with the January 1, 2011 discharge prohibition date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by January 1, 2011, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.
3. In the event that after the benefits assessment is approved by the County, there is a material cessation of the work, as determined by the Water Board, which prevents the implementation, completion, or availability of a community wastewater collection and treatment system to the Site, the Discharger shall cease all discharges from the Septic System by the later of January 1, 2011 or two years following written notice by the Executive Officer of the material cessation. Six months prior to that discharge cessation date, the Discharger shall submit a technical report proposing a method of complying with the discharge cessation date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by the discharge cessation date and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.
4. The Executive Officer may also extend the due date for any interim or reporting requirement of Section A for up to ninety days for circumstances beyond the Discharger's reasonable control.
5. Nothing in this Order authorizes discharges from the Septic System at any time, whether before or after January 1, 2011.

B. INTERIM COMPLIANCE REQUIREMENTS

By three months after the date of this Order, the Discharger shall (1) have the contents of the Septic System pumped or certify that the Septic System has been pumped within the previous three years, and (2) obtain and submit to the Water Board a report by the County of San Luis Obispo or a septic tank pumper with a C42 contractor's license on the San Luis Obispo County Septic Tank Inspection Form and Septic Verification Form (a copy of which is attached as Exhibit "A") that either describes recommended repairs to the Septic System or states that no repairs are necessary. If the Discharger disagrees with any repair recommendation, the Discharger shall provide justification to the Executive Officer no later than four months after the date of this Order explaining why the repairs are not necessary. Unless Water Board staff agrees, in writing, that any recommended repair is not necessary, the Discharger shall provide documentation no later than three months after the date of this Order, that the Discharger has complied with these pumping, inspection and repair requirements. Until the community wastewater collection and treatment system is available to the Site and/or all unpermitted discharges from the Septic System cease, the Discharger shall have three months from every third anniversary of the entry of this Order to satisfy the same pumping, inspection and repair requirements. The Executive Officer may extend the due date for any requirement of Section B for up to ninety days for circumstances beyond the Discharger's reasonable control.

C. PROVISIONS

1. All reports, receipts, notifications and other documents the Discharger submits pursuant to the Order (including Paragraph A.2 of this Order) shall be accompanied by a statement from the Discharger stating: "I certify under penalty of perjury that the attached documents were prepared at my request or under my supervision, and to the best of my knowledge are true, accurate and complete. I understand that there are significant penalties for providing false or incomplete information, including the possibility of criminal fines or imprisonment."
2. If more than one person or entity is a "Discharger" subject to this Order, compliance by any of those persons or entities with the submission requirements of this Order constitutes compliance by all Dischargers. Multiple submissions are not required. However, all named Dischargers are responsible for compliance with all requirements of this Order, and will be subject to enforcement for any non-compliance. Agreements among and/or between Dischargers as to how they will comply with this Order's requirements are not binding on the Water Board and do not protect any Discharger from enforcement actions.
3. Discharger shall inform any subsequent owner or occupant at the Site of this Order and provide a copy of the Order. The Discharger is liable for the use of the Septic System, while the Discharger owns the Site, including but not limited to the use of the Septic System by any tenant or any other person occupying the Site.

4. The property owner shall notify the Executive Officer and the Staff Prosecution Team in writing of any transfer of ownership of the Site within 30 calendar days following close of escrow or transfer of record title after transfer of ownership.
5. The property owner shall notify the Executive Officer and Staff Prosecution Team in writing of the name of any new occupant of the Site within 30 days after the new occupant takes occupancy.
6. If, in the opinion of the Executive Officer, the Discharger fails to comply with any provision of this Order, then the Executive Officer may apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

FAILURE TO COMPLY WITH PROVISIONS OF THIS ORDER MAY SUBJECT THE DISCHARGER TO FURTHER ENFORCEMENT ACTION INCLUDING ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 OR 13350 OF THE WATER CODE AND REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, Michael J. Thomas, Assistant Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on May 10, 2007.


Assistant Executive Officer

S:\WDR\WDR Facilities\San Luis Obispo Co\Los Osos\enforcement\Individual CDOs\Adopted CDOs\CDO R3-2006-1008 (Wilkerson).doc

Exhibit "A"

San Luis Obispo County Septic Tank Inspection Form and
Septic Verification Form



Septic Verification Form
San Luis Obispo County Department of Planning and Building
County Government Center, San Luis Obispo, California 93408 (805) 781-5600

1. Certification of Existing Subsurface Sewage Disposal System.

Date of Inspection _____

(Property Address) _____

(Owner's Name) _____

(APN number) _____

(Permit number) _____

2. Show design and location on a scale of 1"=10' to 1"=40' of the sewage disposal system and 100% expansion area in relation to attached dwellings, structures, wells, rocks, watercourses, etc. on required plot plan.

3. a. I examined the existing subsurface sewage disposal system at the above location on (Date) _____ date.

And determined that the septic tank capacity is _____ gallons. There are _____ bedrooms in the dwelling.

b. There are _____ leachline(s), each is _____ feet long.

c. There are _____ seepage pit(s), each _____ feet in diameter and each is _____ feet deep.

d. The leach bed is _____ feet, by _____ feet, total _____ square feet of leach bed area.

4. a. Construction of septic tank (please check one of the following):

_____ concrete _____ fiberglass other _____

b. The tank is in good condition. The inlet and outlet Tees are present, and the baffle is not cracked, broken or displaced

Yes _____ No _____ Comments: _____

5. a. While pumping the tank, did effluent flow back into tank from the absorption system? _____ yes _____ no

b. Prior to pumping, was the liquid level in the tank above the outlet tee? _____ yes _____ no

c. Is design of system gravity feed? _____ yes _____ no

c. Were well(s) observed on this or adjacent property?* _____ yes _____ no

* If yes, indicate distance of well from: Septic tank, _____ Ft. Leachlines, _____ Ft. Seepage Pit, _____ Ft.

e. Distance from springs, lakes and natural drainage courses: Septic Tank, _____ Ft. Leachlines, _____ Ft. Seepage Pits _____ Ft.

ADDITIONAL COMMENTS _____

6a. _____ It is my opinion that the system appears to be in good working order and can be expected to function properly with proper maintenance. No repairs are necessary at this time.

6b. _____ It is my opinion that the system is not in good working order and will not function properly without the following repairs:

I certify under penalty of perjury that the foregoing is true and correct:

Signature _____

C-42 State License Number _____

Expiration Date _____

Print Name _____

Name of Pumper Company holding C-42 License _____

Address _____

Phone Number _____



County of San Luis Obispo Septic Tank Inspection Report

(Please type or print)

Date of Service / Maintenance _____

Owner's Name _____ Phone No: _____

Location of Inspection _____
(Address) (City) (Zip)

Number of Bedrooms _____ Year Septic System Built: _____

Septage disposal location / date: _____

System Components:

☐ Septic tank with leach field or drywell ☐ Septic tank with pump ☐ Cesspool ☐ Other _____

Estimated capacity of septic tank _____ gallons Number of compartments _____

Amount Pumped _____ gallons Number of access lids: _____

Depth to Access lids: _____ Diameter of Access Lids: _____

Construction of septic tank or Cesspool:

☐ Rectangular ☐ Round ☐ Other _____
☐ Concrete ☐ Fiberglass ☐ plastic ☐ Brick ☐ other _____

Condition of Tank:	No	Yes		No	Yes
Tank deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	inlet tee present	<input type="checkbox"/>	<input type="checkbox"/>
Baffle Wall deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	outlet tee present	<input type="checkbox"/>	<input type="checkbox"/>
Lids are deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	house lateral open	<input type="checkbox"/>	<input type="checkbox"/>
Heavy grease build-up	<input type="checkbox"/>	<input type="checkbox"/>	needs pumping	<input type="checkbox"/>	<input type="checkbox"/>

Minimum concrete thickness at lids: _____ method of measurement: _____

Prior to pumping was effluent above outflow tee? ☐ No ☐ Yes (may indicate failing system)

While pumping did effluent re-enter tank from leach system ☐ No ☐ Yes (may indicate failing system)

Signs of surfacing effluent ☐ No ☐ Yes, location _____

Any signs of Past drainage problems? ☐ No ☐ Yes

site map N

Maintenance performed: _____

System appears to be functioning satisfactorily? ☐ No ☐ Yes

Repairs / upgrade required

1. _____

2. _____

3. _____

Comments / Recommendations: _____

Inspectors qualifications: _____ C-42 _____ NAWT

Other qualifications: _____

Service Company Performing Pumping / Maintenance: _____

The useful life of any septic system is determined by numerous factors, including but not limited to, soil characteristics, water usage, and proper maintenance. This inspection report is based on observations by the inspector and information provided by the system owner. It is not a guarantee of system adequacy.

Signature of Qualified Inspector: _____ Date: _____ Phone: _____

When form is completed, please return pink and yellow copy to: Department of Environmental Health, C/O Megan Lillich REHS, P.O. Box 1489, San Luis Obispo, Ca. 93405.

For any questions about septic repair or maintenance, please contact Barry Tolle REHS at 781-5628
e-mail at: btolle@co.slo.ca.us, or visit our website at www.sloplanning.org

Jennifer Novick

1 SULLIVAN & ASSOCIATES
a Law Corporation
2 2238 Bayview Heights Drive, Suite C
Los Osos, California 93402
3 (805) 528-3355

4 Shaunna Sullivan, SB #96744
Emily Mouton, SB #243387

5 Attorneys for Petitioners
6
7

8 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
9

10 IN RE:

11 The Matter of Discharges of Waste
12 from Individual or Community Sewage
Disposal System in Los Osos/Baywood
13 Park Prohibition Zone (CCRWQCB)
Resolution Plan No. 83-13, Basin Plan p.
14 IV-67)

**CEASE AND DESIST ORDER NOS.
R3-2006-1000 through 1050.**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPEAL**

15
16
17
18 **INTRODUCTION**

19 Petitioners CHARLES E. WILKERSON, NORMA WILKERSON, Prohibition Zone
20 Legal Defense Fund, a.k.a. Citizens for Clean Water (hereinafter "PZLDF"), and Los Osos
21 Community Services District (hereinafter "LOCSD") challenge the entire enforcement action
22 taken by the RWQCB against individual property owners in the Los Osos/Baywood Park
23 Prohibition Zone, beginning in or about September 2005, through the May 10, 2007 hearing
24 (including agenda items 3, 4, 5, and 6) at which the RWQCB issued Cease and Desist Orders
25 ("CDOs") to Petitioners CHARLES E. WILKERSON and NORMA WILKERSON.

26 In 1983, the RWQCB adopted Resolution 83-13 which states:

27 "Failure to comply with any of the compliance dates established
28 by Resolution 83-13 will prompt a Regional Board hearing at
the earliest possible date to consider adoption of an immediate
prohibition of discharge from additional individual and
community sewage disposal systems". (Emphasis added.)



1 Assembly Bill 2701, introduced February 24, 2006 and signed into law on September 20,
2 2006, gave the County of San Luis Obispo control over this project. However, instead of waiting
3 for the vote and for the County to proceed with the community wastewater collection system,
4 the RWQCB has proceeded with abusive, random enforcement procedures by issuance of the
5 CDOs against individuals.

6 In January, 2006, over 20 years after the adoption of Resolution 83-13, the Water Board
7 randomly selected 45 homeowners, including Petitioners CHARLES and NORMA
8 WILKERSON, to be the subject of cease and desist orders, and required that they pump out their
9 septic tanks every two months and cease using their septic tanks by January 1, 2010 or 60 days
10 after the availability of a community sewer system, whichever was sooner.

11 Now that the Water Board seeks to enforce Resolution 83-13 against these individuals,
12 Petitioners submit the enforcement of Resolution 83-13 is now ripe for review. In their Notice
13 of Continued Hearing on January 22, 2007, the Prosecution Team went as far as stating that "the
14 validity of the discharge prohibition... is not an issue that is before the Regional Water Board in
15 these proceedings; nor is it susceptible to collateral challenge through these proceedings, or in
16 any petition for review of these proceedings." Clearly, the RWQCB and its Prosecution Team
17 have no authority to limit the challenges of these proceedings on appeal, and such statement was
18 made to induce Petitioners not to delve into the legal validity of the RWQCB's acts.

19 At an April 2006 hearing, a motion for dismissal was brought before the RWQCB
20 claiming that *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810 and *Morongo Band of*
21 *Mission Indians v. State Water Resources Control Board*, Sacramento County Superior Court
22 Case No. 04CF00535 (Jan 18, 2006) required disqualification of the prosecuting attorney for the
23 RWQCB. Although there had been days of hearings, this disqualification objection resulted in
24 the Prosecution Team's requests for continuations of the May 11 and 12 hearings, which request
25 was posted May 5, 2006. On August 4, 2006, the RWQCB Chairman issued his Preliminary
26 Notice of Ruling, which required the Prosecution Team to again present its entire case from the
27 beginning and required all the previous evidence and testimony prepared or presented by the
28 Prosecution Team to the Board be stricken from the record, with all replacement documentation
to be submitted and available for public review not later than September 8, 2006. The Ruling

1 also required designated parties to be allowed, not less than 30 days, to submit responses to the
2 Prosecution Team's allegations and recommendations by 5:00 p.m. on Friday, October 13, 2006
3 and stated there would be a more detailed procedural order issued in August of 2006.

4 The RWQCB's more detailed procedural order did not issue in August, 2006. It was
5 purportedly posted on the RWQCB's web page three months later on November 21, 2006. The
6 Prosecution Team also failed to submit all of their replacement documentation by September 8,
7 2006, as their case was not submitted until October 4, 2006. So, once again, the RWQCB
8 continued the April hearings until November 2, 2006 and November 9, 2006 by Order that issued
9 on September 7, 2006 and posted on September 12, 2006. Thereafter, the Prosecution Team
10 failed to meet their deadline for submission of documents and evidence, and the RWQCB further
11 continued the November hearings to December by posting an order dated October 16, 2006,
12 advising those individually prosecuted to submit their documents no later than November 15,
13 2006. The posting was purportedly on the website on October 16, 2006, but the mailed notice
14 (sent to some but not all Petitioners) did not arrive in time to afford 30 days to submit
15 documents.

16 On or about September 19, 2006, some of Petitioners requested the deposition of Roger
17 Briggs, the principal architect of the orders under which the recipients were being prosecuted.
18 Although the Staff Prosecution Team was willing to allow a deposition for a limited time on
19 limited issues on October 4, 2006 to the individual who requested it, the RWQCB claimed it was
20 a voluntary appearance not requiring formal notice and thereafter claimed that Mr. Briggs need
21 not comply with Petitioners' timely request for production of documents requesting "Any and
22 all documents that you signed or authored which will be offered as evidence to support the
23 issuance of the proposed cease and desist orders in the Matter of Dischargers Waste from
24 Individual Community Sewage Disposal Systems in the Los Osos/Baywood Park Prohibition
25 Zone (RWQCB Resolution No. 83-13 Basin Plan IV-67)".

26 On October 4, 2006, Roger Briggs was personally served with a formal request for
27 deposition testimony and documents. Prosecution Staff requested ex parte that the RWQCB
28 quash the subpoenas and deposition notice, which resulted in the issuance of the RWQCB Notice
of Chairman's Ruling Regarding Subpoena Documents Submitted on October 4, 2006, quashing

1 all subpoena documents and denying Petitioners the right to depose Mr. Briggs.

2 In a posting purportedly dated November 21, 2006, the RWQCB issued its long-awaited
3 order of procedural guidelines of how the December 14, and 15, 2006 hearings would progress.
4 These guidelines were substantially different from the earlier procedural guidelines, and each
5 individual owner was required to present their own case in the intimidating process belatedly
6 outlined by the RWQCB. The parties were prohibited from acting together in presenting their
7 evidence as the order outlines a subhearing for each and every property owner, after each of
8 which, a CDO issued.

9 When the Prosecution Team failed to meet its deadline for submission of its case, the
10 RWQCB issued a Revised Notice of Public Hearing, setting the new hearing dates for December
11 14, and 15, 2006. The Notice required the Prosecution Team's rebuttals to proposed cease and
12 desist orders to be filed and posted no later than December 1, 2006. Again, the Prosecution
13 Team failed to meet this deadline, and untimely submitted, apparently sometime after 5:00 p.m.
14 on Friday December 1 and additional documents on December 4, their rebuttals of the Petitioners
15 case. The Prosecution Team failed to mail the required documents, and none of Petitioners have
16 received a copy to date. Furthermore, the Prosecution Team added to their submission into
17 evidence yet another document signed by Mr. Briggs as additional documentation to include in
18 the case which had not otherwise been produced, which was not only submitted almost three
19 months after the Prosecution Team's original deadline for submitting evidence, but which
20 Petitioners had no chance to object to, and no opportunity to confront Mr. Briggs about.
21 Ironically, the Prosecution Team's documents included objections against any introduction of
22 evidence by Petitioners for allegedly failing to timely submit copies of evidence to the RWQCB,
23 while the RWQCB has never submitted copies of any evidence or documents to any of
24 Petitioners.

25 In anticipation of the originally scheduled April hearings, Petitioners submitted a list of
26 847 documents which they intended to rely on as support at the hearings. As stated above, the
27 Prosecution Team's objections to Petitioners' documents were belatedly posted on the RWQCB
28 website on December 4, 2006, and were never served upon any of Petitioners. On December 8,
2006, the RWQCB sustained the huge majority of the Prosecution Team's belated objections in

1 its Chairman's Order Regarding Prosecution Team's Objections to Evidence for Hearings on
2 December 14 and 15, 2006.

3 On November 18, 2006, Petitioners filed a *Petition for Writ of Mandamus*, in the Superior
4 Court of San Luis Obispo County, Case No. CV 060992. Petitioners sought a continuance of
5 the hearings scheduled for December 14, and 15, 2006, until they had been afforded due process
6 and equal protection rights, and the opportunity to depose Mr. Briggs. Petitioners supplemented
7 their original pleadings with a *First Amended Petition for Writ of Mandamus* filed on November
8 28, 2006, *Supplemental Memorandum of Points and Authorities* filed on December 7, 2006, and
9 *Second Supplemental Memorandum of Points and Authorities* filed on December 11, 2006. The
10 entire set of pleadings submitted to the court in relation to the November 18, 2006 *Petition for*
11 *Writ of Mandamus* was previously provided to the SWRCB in the appeal dated January 16, 2007,
12 SWRCB/OCC File A-1825 and A-1825(a), as part of Exhibit packet 5.

13 While recognizing that there may have been due process, equal protection, and 6th
14 Amendment issues present, the court declined to continue the scheduled hearings, and dismissed
15 the Petition without prejudice, so that Petitioners could re-submit their complaints after the
16 hearings were held if the RWQCB issued CDOs after considering the issues presented to the
17 court.

18 On December 1, 2006, less than 10 days from the date of the hearings, the Prosecution
19 Team recommended a new and different cease and desist order be issued against Petitioners and
20 the other randomly selected, targeted individuals. The new order was never mailed to Petitioners
21 for an opportunity to review it before the hearings, and again, Petitioners were forced to rely
22 upon the frequently-corrupted RWQCB website for the latest updated information.

23 The December 1, 2006 CDO finally references Assembly Bill 2701, reflecting that it is
24 the County that will be controlling the community wastewater treatment system, not individuals.
25 The Prosecution Team makes the false statement in their untimely and still unserved rebuttal
26 dated December 1, 2006 that:

27 "The modified CDO makes clear that so long as the community
28 wastewater system contemplated by AB 2701 is moving
forward, the respondent is not required to cease use of the septic
system for the Respondent's site. (see, ¶ A.1) There is no
requirement in the modified CDO that the community
wastewater system be completed by a particular date. That was

1 the intent of the proposed CDO but the Prosecution Team
2 believes the modified CDO is clear in that regard”.

3 This proposed CDO was again modified on December 14 and 15 at the hearings, but the
4 new order, although different from what had previously been proposed and served, still required
5 the unattainable. The CDO, which after issuance can be enforced criminally or civilly against
6 Petitioners by the RWQCB, requires that Petitioners move from their homes by 2011 if a
7 community system, which none of Petitioners can compel, is not completed.

8 The RWQCB posted a Proposed Modified Settlement Agreement dated December 6,
9 2006, which stated, “we will add language to make clear that there is no required minimum
10 penalty which must be imposed in the event that there is an action taken to enforce the terms of
11 the settlement agreement.” This December 6, 2006 Proposed Modified Settlement Agreement
12 is the document which Petitioners were led to believe would be their settlement agreement with
13 the RWQCB. The document specifically promised that the agreement would not allow minimum
14 penalties by the RWQCB. Various notices regarding the Settlement Agreement advised
15 Petitioners they need not attend the hearing if the agreements were acceptable to them.

16 The hearings originally scheduled for April 2006, were finally conducted on December
17 14, and 15, 2006. Each individual homeowner, who did not agree to the purported Settlement
18 Agreement, presented their defense against the Prosecution Team’s case, and each individual
19 was, in turn, issued a cease and desist order. Those persons not appearing at the hearings were
20 declared to be in default and were also issued CDOs.

21 A shortage of time at the December 14, and 15 hearings prevented a few Petitioners,
22 including CHARLES E. and NORMA WILKERSON, from conducting their subhearings. The
23 subhearings for these persons were rescheduled for January 22, 2006, and then again for May
24 10, 2007. On May 10, 2007, Petitioners CHARLES and NORMA WILKERSON were issued
25 CDOs for alleged illegal discharges into the Los Osos/Baywood Park Prohibition Zone, which
26 CDOs are the subject of the instant appeal.

27 ARGUMENT

28 Petitioners CHARLES E. and NORMA WILKERSON are residents and homeowners
in Los Osos, California, who have allegedly been “randomly selected” and prosecuted as one

1 of 45 homeowners targeted by the RWQCB for issuance of CDOs pursuant to *Water Code*
2 *section 13304*. The CDOs issued against Petitioners are invalid and improper as violative of
3 Petitioners' due process, equal protection, 6th Amendment, privacy, and other constitutional
4 rights. The RWQCB's actions were also arbitrary and capricious, entirely unsupported by the
5 administrative record, and improperly motivated by an illegal purpose. These CDOs deprive
6 the Petitioners and Los Osos residents of their property without just compensation, and cause
7 unnecessary expenses and undue burden as they capriciously and arbitrarily impose unattainable
8 clean-up deadlines on individual residents. These illegal actions by the RWQCB have been
9 taken against individuals and residents of Los Osos with legally permitted and properly
10 functioning individual septic systems who have absolutely no authority or ability to ensure
11 completion of a wastewater collection and treatment facility as demanded by the CDOs.
12 Further, the CDOs have been improperly issued against Petitioners in their individual capacity,
13 and against the owners of homes existing prior to the RWQCB's enactment of Resolution 83-
14 13. Additionally, the RWQCB has failed and/or refused entirely to provide the assistance
15 mandated under *Water Code* §§ 13291.5 and 13301.1.

16
17 **I. THE MAY HEARINGS WERE CONDUCTED IN VIOLATION OF PETITIONERS' DUE PROCESS RIGHTS.**

18 State action which classifies individuals is limited by the guarantee of equal protection
19 and due process in the Federal Constitution and, as an independent ground which may provide
20 additional guarantees, the State Constitution, which provides that no person may be denied equal
21 protection of the laws (*Cal. Const.*, Article I, § 7(a)). The United States Supreme Court has held
22 that it is necessary that "the inexorable safeguard... of a fair and open hearing be maintained in
23 its integrity... The right to such a hearing is one of the rudiments of fair play... assured to every
24 litigant by the Fourteenth Amendment as a minimal requirement." (See *Ohio Bell Tel. Co. v.*
25 *Public Util. Com. of Ohio* (1937) 301 U.S. 292, 304). "Notice is required before property
26 interests are disturbed, before assessments are made, before penalties are assessed." (*Lambert*
27 *v. California* (1957) 355 U.S. 225, 228). In all cases, agency action must be set aside if the action
28 failed to meet statutory, procedural, or constitutional requirements (*Citizens to Preserve Overton*
Park, Inc. v. Volpe (1971) 401 U.S. 402, 413-414).

1 **A. Petitioners' Were Not Given Proper Notice of the Hearings, Procedures,**
2 **Evidence, and/or Objections Heard at the December Hearings.**

3 Petitioners were not properly noticed (and some have not been given any notice) of the
4 hearings, procedures, evidence or objections discussed at the May Hearings. The RWQCB's
5 defective, untimely, and improper attempts to serve Petitioners by posing on their website,
6 misleading and erroneous information and failure to give notice at all to parties is a clear
7 violation of due process and such actions must be undone, erased and corrected.

8 *Water Code* § 13301 requires notice and a hearing before issuance of a CDO. But even
9 where a statute is silent as to notice, due process of law requires adequate notice and opportunity
10 to be heard. It is a fundamental right guaranteed by our constitution:

11 Due process of law requires that defendants be afforded notice
12 of proceedings involving their interests and an opportunity to be
13 heard. Basically, this requires '... notice reasonably calculated,
14 under all the circumstances, to appraise interested parties of
15 pendency of the action and afford them opportunity to present
16 their objections.' [*Mullane v. Central Hanover Bank & Trust*
17 *Co.* (1950) 339 U.S. 306, 314, 70 S.Ct. 652, 657; and see
18 *Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791,
19 795-798, 103 S.Ct. 2706, 2709-2711] The Rutter Group § 5:3

20 Not only was notice inadequate, but there has to be enough time allowed for the parties
21 to prepare or present their opposition to the Prosecution Team's belatedly filed documents or in
22 accordance with the procedural guidelines mandated by the RWQCB.

23 The legal proposition that all notice must be in a reasonable time period is codified
24 throughout all areas of the law as it springs from the U.S. and California Constitutions. It
25 logically follows, that any changes to notice previously given must also be made in a reasonable
26 time as well. (See Rutter Group § 13:122; Ca Rules of Court Rule 29(a)(2), et al.)

27 Even something as final as a Judgment, is rendered moot when notice is either forsaken,
28 defective, or has been modified. A modified notice of issues is grounds for invalidation as
29 follows:

30 "A judgment entered on defective notice of the underlying
31 proceeding is subject to collateral attack. [See, e.g., *Marriage of*
32 *Van Sickle* (1977) 68 Cal.App.3d 728, 740, 137 Cal.Rptr. 568,
33 575--substantial deviations between original complaint and copy
34 served on respondent; see *Marriage of Kreiss* (1990) 224
35 Cal.App.3d 1033, 1039-1040, 274 Cal.Rptr. 226,
36 230--noncompliance with Ca Fam § 215 (mandatory service of
37 postdissolution motions on opposing party, ¶18:25 ff.) 'is the
38 equivalent of failure to serve summons and complaint, which

renders a judgment void on its face and subject to collateral attack at any time'J."

The October 17, 2006 Notice of Chairman's Ruling Regarding Subpoena Documents Submitted October 4, 2006 was untimely and utterly failed to afford the Petitioners and residents even a modicum of due process. No notice nor opportunity to object was afforded the residents to address the Motion to Quash brought by the Prosecution Team, which was allegedly filed on October 10, 2006. The Petitioners and residents were never noticed of any hearing to allow them to oppose said Motion to Quash, nor was the motion properly served on the residents. While some residents were mailed the Motion to Quash, those privileged few actually did not receive the motion until Monday, October 16, 2006, which afforded no time to respond before the Chairman's Ruling issued on October 17, 2006. Furthermore, the ruling was only sent out by regular mail to a select few on October 18, 2006, thus insuring the residents and Petitioners were not informed of the Chairman's Ruling until well after the fact. Therefore, the RWQCB's resulting action (and specifically the Notice of Chairman's Ruling Regarding Subpoena Documents Submitted on October 4, 2006) must be rendered moot as a result of their defective notice.

On August 4, 2006, RWQCB Chairman, Jeffrey Young, issued a Preliminary Notice of Ruling Regarding Presentation of Evidence Supporting the Issuance of Individual Cease and Desist Orders for Residents of Los Osos and Baywood Park. The Chairman stated in the Preliminary Notice served by certified mail that "By the end of August, 2006, the RWQCB Chairman will issue a more detailed Procedural Order establishing new time lines for the hearing... and addressing other procedural matters such as the time lines for the submission of documentary evidence by Designated Parties...". The Chairman failed to serve the detailed Procedural Order and it was not posted until sometime after September 7, 2006 with the inaccurate statement that the Prosecution Team's documents were posted and available for public review. Thus, such order should also be rendered moot as violative of Petitioners right to proper notice under the due process clause.

Petitioners and the randomly selected individuals, including those who were without benefit of a computer internet access, were not served or provided the written documentation from the RWQCB but were required to obtain the evidence being used against them from the

1 website of the RWQCB or from review of the records at the RWQCB office. Unfortunately, the
2 website which contains the documents of the RWQCB Prosecution Staff which were to be
3 posted no later than September 8, 2006 and which eventually posted on October 4, 2006, has
4 been corrupted and was, and continues to be, periodically inaccessible, including at times when
5 Petitioners' submissions were due. Furthermore, the documents were not made available at the
6 RWQCB offices as required. The RWQCB wrongfully takes the position that their posting of
7 notice of their actions on their website constitutes service of notice in this adjudatory
8 proceeding against Petitioners and the other randomly selected individual property owners.

9 Due to the Prosecution Team's failure to meet the deadline for submission of their case,
10 the RWQCB issued a Revised Notice of Hearing setting the hearing for December 14 and 15,
11 2006 and requiring all documents to be submitted by Petitioners by November 15, 2006. This
12 notice revising the deadlines for Petitioners to comply, however, the revised notice was not
13 served on all Petitioners and in some instances, not served at all. Petitioners object to the
14 attempted service of process on them as individuals by RWQCB posting on a website rather than
15 actual service by mail and RWQCB's failure to notice and serve by mail all parties they seek to
16 prosecute and issue a cease and desist order. Service was not effectuated by posting on the
17 RWQCB website on October 16, 2006.

18 None of the Petitioners have agreed to accept service of process by email or by RWQCB
19 website posting, and no justification for service of process by those means exists in the Water
20 Code, Government Code, California Code of Regulations, or otherwise. When the RWQCB has
21 elected to serve notices and rulings by mail, it has not served the documents on all Petitioners,
22 or even those who have specifically requested such service in writing. The RWQCB has never
23 submitted any documents to any of the recipients nor served any of the recipients with any notice
24 (when they bother to serve by mail) affording the additional five days for mailing, which is
25 normally required under *Code of Civil Procedure* section 1013.

26 Even more surprising is as of December 1, 2006, less than 10 days from the date of the
27 December hearings, the Prosecution Team recommended a new and different cease and desist
28 order be issued against Petitioners. Of course, Petitioners were not given notice of the amended
proposed CDO, much less proper and sufficient notice. Even this proposed CDO, again not

1 properly served, was different than the CDO eventually adopted at the December hearing and
2 different than the CDO issued against Petitioners CHARLES and NORMA WILKERSON on
3 May 10, 2007.

4 The notice requirements set forth in the *California Government Code* and *Water Code*
5 are so minimal that any violation of such minimal requirements creates a large disadvantage on
6 the part of the improperly served (or unserved) party. The notice requirements are also fairly
7 simple, and Petitioners can think of no reason why the RWQCB has been unable or unwilling
8 to meet such requirements. Petitioners contend that the RWQCB and Prosecution Team's
9 documents, rulings, orders, and determinations in regards to the May hearings were never
10 properly served on all parties, contain no proof of service as required, remain posted online
11 unsigned, and therefore, any rulings, decision, or other actions taken by the RWQCB relating to
12 the May hearings are void as violative of Petitioners' right to proper notice. Petitioners submit
13 that they should not have to rely on looking on the RWQCB website to find out what is
14 happening in the prosecution of the case against them.

15 **B. The RWQCB Failed To Meet Its Self-Imposed Deadlines For The**
16 **Production and/or Submission of Their Arguments, Evidence, and**
Objections To The Detriment and Disadvantage of Petitioners.

17 The RWQCB Prosecution Team has strung Petitioners along for over a year in
18 preparation for the hearings to determine issuance of proposed CDOs due to their inability to
19 meet their self-imposed deadlines. The RWQCB has failed to meet every self-imposed deadline
20 for the production or submission of their arguments, evidence, and objections to Petitioners'
21 timely submitted documents to the detriment and extreme disadvantage of Petitioners.

22 On August 4, 2006, RWQCB Chairman Jeffrey Young issued a Preliminary Notice of
23 Ruling Regarding Presentation of Evidence Supporting the Issuance of Individual Cease and
24 Desist Orders for Residents of Los Osos and Baywood Park. This order required the RWQCB
25 Prosecution Staff to submit documentation, proposed cease and desist orders and any
26 documentary evidence that the Prosecution Team intends to rely on to support the issuance of
27 individual cease and desist orders by 5:00 p.m. on September 8, 2006. The order also stated that
28 a more detailed procedural order would be issued by August 2006. The order continued "other
designated parties will be allowed, not less than 30 days, to submit and post on their website

1 responses to the Prosecution Team's allegations and recommendations, i.e., by 5:00 p.m. on
2 Friday, October 13, 2006".

3 The RWQCB Prosecution Team failed to meet the mandated requirements and all of their
4 supporting documents were not posted until almost a month past the deadline, on or after
5 October 4, 2006, and even then were periodically unavailable due to corruptions on the RWQCB
6 website. The RWQCB was also required to submit a more detailed procedural order by August
7 2006. The RWQCB failed to meet their own deadline as such procedural order was purportedly
8 posted on the RWQCB website approximately three months late, on November 21, 2006.

9 The RWQCB claims that Petitioners were entitled at least 30 days to respond to the
10 Prosecution Team's documents which were to be made publicly available, but while the
11 documents were purportedly posted on the RWQCB website on October 16, 2006, the mailed
12 notice sent to the select few individuals did not arrive in time to afford 30 days to submit
13 documents. The RWQCB failed to provide sufficient time to respond to the documents belatedly
14 filed and posted by the Prosecution Team, and have to date not provided justification for
15 extending the time allotted for the Prosecution Team, while strictly holding Petitioners to the 30-
16 day limit set forth in the Chairman's Ruling. Petitioners timely submitted their case and their
17 objections to the Prosecution Team's case by the November 15, 2006 deadline.

18 On October 16, 2006, Michael Thomas, RWQCB Assistant Executive Officer, issued a
19 Revised Notice of Public Hearing, in which the Prosecution Team was required to submit their
20 objections to Petitioners' case by 5:00 p.m. on Friday, December 1, 2006. Again, the
21 Prosecution Team failed to meet this deadline, and as of 5:00 p.m. on December 1, 2006, no such
22 documentation existed. On December 4, 2006, in violation of Michael Thomas' Revised Notice
23 of Public Hearing (which was issued because of the Prosecution Team's previous violation of
24 Chairman Young's Preliminary Notice of Ruling) the Prosecution Team was allowed to submit
25 additional documents in support of their case. Ironically, these documents included objections
26 against any introduction of evidence by Petitioners for allegedly failing to submit timely copies
27 of evidence to the RWQCB.

28 The RWQCB has failed to meet every self-imposed deadline for the production or
submission of their arguments, evidence, and objections to Petitioners' timely submitted

1 documents to the detriment and extreme disadvantage of Petitioners. As a result, Petitioners
2 were afforded less time to prepare, compile and submit their defense documents than the
3 Prosecution Team had. Although utterly needless to say, Petitioners contend that had they failed
4 to meet their deadline for submission of defense documents, late submission would not have
5 been allowed by the RWQCB.

6 **C. The RWQCB Wrongfully Refused To Admit The Large Majority Of**
7 **Petitioners' Evidence And Documents Into Evidence.**

8 Petitioners timely submitted their arguments, evidence, documents, and objections to the
9 RWQCB's proposed issuance of the CDOs on October 12, 2006, by a letter from the LOCSD's
10 attorney, Gregory M. Murphy. The Prosecution Team belatedly submitted their rebuttal evidence
11 and objections three days after the deadline for submitting such documents had expired.
12 Regardless, the RWQCB issued an order sustaining the bulk of the objections set forth in the
13 untimely Prosecution Staff Evidence Objections. This order basically gutted the Petitioners'
14 request for evidence and documents, and as many as 600 of the 847 requested documents were
15 thrown out and made unavailable for reliance by Petitioners in creating a defense against the
16 CDOs. Not surprisingly, every single document submitted by the Prosecution Team for reliance
17 was duly admitted into the record by the RWQCB.

18 The RWQCB's substantial lenience shown toward the Prosecution Team for their failure
19 to meet deadlines, requests for admission of evidence, and objections to Petitioners' defense
20 documents, on the one hand, and the RWQCB's strict refusal to grant continuances, allow
21 evidence by Petitioners, and take into account the numerous valid objections made by
22 Petitioners, on the other hand, is evidence that the CDOs were preordained, and of the
23 RWQCB's continued bias, improper motives, and inability to conduct a fair hearing.

24 **II. THE ENFORCEMENT ACTIONS WERE CONDUCTED IN VIOLATION OF**
25 **PETITIONERS' RIGHT OF EQUAL PROTECTION AS THE CDO RECIPIENTS**
26 **HAVE NOT BEEN TREATED EQUALLY.**

27 State action which classifies individuals is limited by the guarantee of equal protection
28 and due process in the Federal Constitution and as an independent ground which may provide
additional guarantees, the State Constitution, which provides that no person may be denied equal
protection of the laws (*Cal. Const.*, Article I, §7(a)). The Equal Protection Clause requires that

1 persons under like circumstances be given equal protection and security in the enjoyment of
2 personal and civil rights, the acquisition and enjoyment of property, the enforcement of
3 contracts, and the prevention and redress of wrongs. The Clause specifically requires that
4 persons similarly situated receive equal treatment (*Skinner v. Oklahoma* (1942) 316 U.S. 535).

5 **A. Petitioners Have Been Randomly Selected and Unfairly Targeted for**
6 **Enforcement Over Other Similarly-Situated Residents and Property Owners**
7 **of Los Osos/Baywood Park.**

8 Perhaps most significantly, Petitioners have been forced into the position of challenging
9 the RWQCB enforcement actions on behalf of the entire town of Los Osos. Petitioners and the
10 remaining original 45 targeted individuals have been forced to deal with each and every
11 procedurally and substantively incorrect step of this abusive process, while the RWQCB has
12 worked out numerous practical and legal problems with their enforcement proceedings. They
13 have expended enormous amounts of time and money to challenge the legality of this
14 enforcement process and the authority of the RWQCB to issue CDOs against them individually.
15 They have spent countless hours trying to reach an agreement with the RWQCB which will serve
16 to reach the environmental goals of the Prohibition Zone and which they will be physically
17 capable of performing. These improper proceedings have entirely consumed the free time of
18 Petitioners, and the first 45 targeted individuals have done these things to the huge detriment
19 of their health, marriages, jobs, families, and community.

20 Petitioners have unfairly been forced to pave the way for the entire community in
21 challenging this unprecedented and improper action by the RWQCB. Meanwhile, the
22 approximately 4500 remaining Los Osos residents subject to future CDOs and/or CAOs have
23 been allowed to sit by while the first 45 individuals endure the distress of these proceedings and
24 bear the high costs of challenging these enforcement actions for the benefit of all Los Osos
25 residents. Other residents and homeowners in the Los Osos/Baywood Park Prohibition Zone will
26 be able to utilize the costly and time-intensive arguments that have been prepared and evidence
27 that has been gathered by Petitioners in defense of the RWQCB's enforcement actions at little
28 or no cost or injury to themselves. Requiring Petitioners to proceed with the numerous
challenges and heavy burden for the benefit of the entire community while the RWQCB clumsily
stumbles through this abusive process is a violation of their equal protection rights.

1 **B. All Persons Subject to the RWQCB's Limited Initial Enforcement Action Are**
2 **Not Being Treated Equally In Violation of The Equal Protection Clause.**

3 The issuance of CDOs on May 10, 2007 also violated Petitioners' equal protection rights
4 in that other CDO recipients in Los Osos/Baywood Park have not been treated equally. For
5 example, all targeted individuals who did not attend the December 14 and 15, 2006 hearings
6 were considered to be in default and were issued CDOs. However, some, but not all, of these
7 defaulted parties were given the opportunity to defend their homes and present their case at the
8 subsequently-scheduled January 2007 hearing. Allowing these select few individuals to present
9 their defenses at the January 2007 hearing, while denying the right to others in the same
10 situation, and after denying each and every reasonable request for a continuance made by
11 numerous targeted individuals, constitute a clear violation of Petitioners' equal protection rights.

12 Additionally, on May 14, 2004, the RWQCB issued CDOs against five homeowners for
13 alleged violation of the discharge prohibition. The conditions of such 2004 CDOs prohibited:
14 (1) discharges to areas other than the individual system; (2) discharge to any waters into adjacent
15 waterways or onto adjacent properties; (3) bypass of the treatment facility and discharge of
16 wastes directly to the disposal area; (4) daily flow to the disposal area in excess of 375 gallons
17 per day; and (5) public contact with sewage as a result of the treatment and disposal operations.
18 The 2004 CDOs also required the discharger to (1) inform any subsequent owner of the CDO;
19 (2) to make required reporting requirements and disclose information to the Executive Officer;
20 (3) to achieve compliance with the Water Basin Plan as soon as possible; and (4) to connect to
21 the sewer within 30 days of its availability.

22 The instant CDOs, however, require that a collection and treatment facility be built on or
23 before January 1, 2011, or Petitioners and other targeted individuals risk the threat of mandatory
24 daily fines of \$500 and potential fines of up to \$5000 per day that the discharges continue in the
25 absence of a community system. The RWQCB is attempting to force these similarly (if not
26 exactly) situated individuals to finance, approve, and complete construction on a water treatment
27 facility in under four years, which these Petitioners are entirely incapable of doing, or be subject
28 to exorbitant fines and penalties for the County's failure to build a sewer. Petitioners should not
 be subject to more onerous conditions than those previously required of other citizens of Los

1 Osos who have been issued CDOs for the exact same alleged violation of Resolution 83-13. In
2 addition, the RWQCB has absolutely no rational or acceptable basis for holding Petitioners
3 CHARLES E. and NORMA WILKERSON to the requirements, standards and penalties of their
4 CDOs while simultaneously deciding not to proceed with enforcement against the remaining
5 residents and property owners of Los Osos.

6 **C. The RWQCB's Enforcement Actions Have Made Improper Distinctions**
7 **Based on Gender, Marital Status, and Age.**

8 The RWQCB Prosecution Team engaged in gender bias and discrimination by failing and
9 refusing to serve female spouses of CDO recipients, even when specifically requested to do so.
10 In addition, the RWQCB discriminated against married couples in refusing to give spouses the
11 same amount of time as similarly situated single individuals to present their defense prior to
12 issuance of the CDOs and/or CAOs, even though the harsh consequences of the CDOs bind both
13 spouses equally. While single recipients of CDOs and/or CAOs were allotted a dismal 15
14 minutes to present their case against the RWQCB enforcement actions, 10 minutes to cross-
15 examine evidence put on by the Prosecution Team, and 5 minutes for rebuttal evidence, the
16 WILKERSONS and all other married individuals targeted for enforcement were required to split
17 the already insignificant amount of time with their spouses, leaving them with an insufficient
18 opportunity to present a defense in protection of their property. It was a violation of Petitioners'
19 equal protection rights to force married individuals to split the already scant time allotted for
20 defending against issuance of the CDO. As the issuance of a CDO affects both individuals
21 equally and as harshly as unmarried homeowners, each proposed recipient, whether married or
22 not, should have been granted the same amount of time to present their defense.

23 Petitioners were also not allowed to have another party present their case unless he or she
24 was an attorney, or was acting under a validly executed power of attorney. Petitioners were
25 forced to stand up before the RWQCB and present their case like an attorney or risk default
26 issuance of a CDO that would force them out of the homes if the sewer is not complete by the
27 arbitrary date the RWQCB has selected. Denying Petitioners the right to have a non-attorney
28 representative assist in the presentation of their defense, as is typically allowed in administrative
hearings further violated their equal protection rights.

1 **D. Petitioners Whose Hearings Were Held First In Order Were Improperly**
2 **Disallowed the Benefit of Additional Evidence Presented at Subsequent**
3 **Hearings in Violation of Their Right of Equal Protection and RWQCB**
4 **Orders.**

5 Pursuant to the RWQCB's November 21, 2006 procedure-setting order, individual
6 proceedings for each proposed cease and desist order were to be considered in alphabetical order
7 by last name. The order continued:

8 "Any person named in a proposed Cease and Desist Order may,
9 upon a showing of property-specific relevance and materiality
10 and with the approval of the Chair, incorporate by reference any
11 testimony offered by other persons named in proposed cease and
12 desist orders... Individuals named in proposed Cease and Desist
13 Orders will be encouraged to incorporate testimony from other
14 individual proceedings that is relevant and material to the
15 individual proceedings into the record of such individual
16 proceedings in order to expedite the hearing process (*i.e.*, do not
17 repeat testimony from other parties."

18 However, as the individual proceedings for each CDO began, the RWQCB issued CDOs
19 after each and every 30 minute individual subhearing. Thus, in violation of their own procedural
20 guidelines, the Petitioners whose subhearings were held first (those with last names beginning
21 with A, B, etc.) were denied the right to incorporate by reference the evidence and testimony
22 presented by other individuals over the three full days of hearings. Petitioners, regardless of
23 their spot in the RWQCB's set order, were purportedly entitled to incorporate the testimony of
24 all other targeted individuals, including those who presented evidence and testimony over
25 December 14 and 15, 2006, January 22, 2007, May 10, 2007, as well as the remaining seven of
26 the original random 45 who will continue to present evidence and testimony at future hearings.
27 The RWQCB's procedures, actions, and rulings made at the conclusion of each individual
28 subhearing were violative of their own procedural order of November 21, 2006, and violative
 of Petitioners' equal protection rights.

 The RWQCB also improperly withheld the identities of the original group of targeted
 individuals, resulting in a severe limitation on Petitioners' ability to provide a joint defense
 against issuance of CDOs and CAOs. The RWQCB's failure to provide information to
 Petitioners regarding the class of individuals being prosecuted improperly kept Petitioners in the
 dark and prevented them from providing a joint defense, while the remaining residents and
 homeowners of Los Osos/Baywood Park will have the benefit of a consolidated effort.

1 **E. Petitioners and Citizens of Los Osos Have Been Subjected to More**
2 **Impracticable, Harsh and Pecuniary Restrictions Than Surrounding**
3 **Communities.**

4 Petitioners have also been treated differently than members of other surrounding
5 communities in violation of their equal protection rights. In the Spring of 2006, the RWQCB
6 took off of its calendar an action that would have forced Morro Bay to upgrade its existing
7 sewage treatment plant to meet all current scientific and environmental standards within
8 approximately nine and a half years. In contrast, the CDOs issued at the May hearings subject
9 the Petitioners and other individual citizens of Los Osos to fines up to \$5,000 a day, if a brand
10 new sewage treatment plant has not been financed, designed, permitted, and constructed from
11 scratch in little over four years even after clear evidence that the individuals have no authority
12 or ability to comply with such demand. It is arbitrary and unreasonable to grant one local
13 government a decade in which to update their sewage treatment plant, while another is forced
14 to act quickly or face punishment of its citizens when starting from scratch.

15 Clearly, the unnecessarily obtrusive and harsh actions of the RWQCB against these
16 residents of Los Osos has been improperly fueled by the LOCSD's previous inability to build
17 a community system rather than a desire to protect the waters of Los Osos. The failed attempts
18 at building a sewer system in the past cannot be attributed to Petitioners, and equal protection
19 of the laws should serve to afford them the same application of the laws as other remaining
20 residents of Los Osos, as well as the residents of surrounding communities.

21 **III. THE MAY HEARINGS WERE CONDUCTED IN VIOLATION OF**
22 **PETITIONERS' 6TH AMENDMENT RIGHT TO CONFRONT THEIR ACCUSER.**

23 **A. Roger Briggs Is a Necessary Witness and Petitioners' Inability to Depose**
24 **Him is a Violation of Their 6th Amendment Rights.**

25 Petitioners contend that Roger Briggs (hereinafter "Briggs") is the principal architect of
26 the orders under which Petitioners have been prosecuted, and a critical witness whom they have
27 the right to depose. Briggs is the Executive Officer of the RWQCB and is responsible for the
28 alleged research, reasoning, and actual issuance of the orders to be enforced by CDOs. The
 enforcement action for issuance of CDOs is directly related to the creation of the Prohibition
 Zone and alleged violation of Resolution 83-13 and other orders and requirements of the

1 RWQCB signed or issued by Briggs. The Water Basin Plan directed by Briggs and the
2 accusations set forth in writing in Briggs' numerous directives have been introduced into
3 evidence against Petitioners without affording Petitioners any opportunity to question the author
4 of those orders and Water Basin Plan. Briggs is the only person who can give evidence on the
5 central issues concerning the issuance of the CDOs, and thus, his testimony by deposition is
6 absolutely critical to the defense of the Petitioners. Therefore, Petitioners are entitled to
7 question Briggs concerning this enforcement action, including questions pertaining to the
8 adoption of the Basin Plan Prohibition which is being enforced by way of the CDOs.

9 According to your office, per a State Water Resources Control Board order dated May
10 4, 2006:

11 "Mr. Briggs is a witness in this matter. . . he has been working
12 on Los Osos septic system problems periodically since the early
13 1980s. The District called Mr. Briggs as a witness. . . These or
14 other designated parties might also call him as a witness during
15 the individual hearings. *Mr. Briggs might also be a necessary*
16 *witness for the Prosecution Team's rebuttal or for its case in*
the individual hearings. Removing him from the hearing
process is not legally required and, due to his unique role as a
witness in this case, is not possible." (SWRCB Request for
Continuance of May 11-12, 2006 Hearing on Los osos Cease
and Desist Orders R3-2006-1000 through 1049, emphasis
added).

17 Briggs was unavailable to provide testimony prior to the hearing or cross-examination
18 testimony during the May 10, 2007 adjudicatory hearings against Petitioners. Petitioners were
19 forced to submit to the RWQCB's actions, findings, rulings, and determinations at the May
20 hearing without the benefit of Briggs' testimony, presence, and cross-examination. By your own
21 admission, such a refusal by the RWQCB to allow Petitioners the right to confront and cross-
22 examine witnesses such as Briggs, whose written orders and actions have been used to prosecute
23 them, is not possible without violating the constitutionally guaranteed rights of Petitioners and
24 those persons similarly situated.

25 **B. Parties Appearing "In Pro Per" Have the Authority to Subpoena**
26 **Witnesses and Testimony.**

27 The RWQCB misinterpreted the applicable statute in determining that any subpoenas
28 issued by parties appearing *in pro per* (i.e. representing themselves) were inherently defective.
The relevant statute, which the RWQCB quoted in its decision, states:

1 “Subpoenas and subpoenas duces tecum *shall* be issued by the
2 agency or presiding officer *at the request of a party*, or by the
3 attorney of record for a party, in accordance with Sections 1985 to
4 1985.4, inclusive, of the Code of Civil Procedure.”

5 *Government Code* § 11450.20(a) (emphasis added).

6 In addition, *Government Code* § 11190 provides,

7 “Any party to any departmental hearing has the right to the
8 attendance of witnesses in its behalf at the hearing or upon
9 deposition upon making requests to the Board to the head of the
10 Department, designating the persons sought to be subpoenaed and
11 depositing with the officer before whom the hearing is to be had,
12 the necessary fees and mileage.”

13 Clearly, the *Government Code* grants agencies the authority to issue subpoenas at the
14 request of the parties themselves. In addition, the use of the term “shall” is directive rather than
15 discretionary. Thus, a proper interpretation of the statute would serve to *direct* the agency to
16 issue the subpoena at the proper request of any party.

17 Petitioners contend that the RWQCB’s interpretation of the statute as purportedly barring
18 the issuance of subpoenas requested by parties appearing *in pro per* was negligent and/or made
19 in bad faith. The subsequent decision placed Petitioners in a very difficult position for the
20 upcoming hearing and denied them the right to depose or otherwise confront their accuser, the
21 right to obtain the alleged evidence upon which the CDOs are supposedly based, and the right
22 to avail themselves of the protections afforded them by law and the State and Federal
23 Constitution.

24 The Petitioners timely noticed and served Briggs for a Deposition, and thus, the RWQCB
25 had no authority to deny their requests. The RWQCB’s order quashing the subpoena documents
26 was improper and violative of Petitioners’ rights, including their 6th Amendment, due process,
27 and equal protection rights, as well as *Government Code* § 11190.

28 **C. The RWQCB Improperly Denied Each and Every Valid Discovery Request
Made By Petitioners.**

A second set of discovery materials, consisting of a request for the issuance of
administrative subpoenas, deposition subpoenas, and notices of taking deposition, were
subsequently sent to the RWQCB on March 13, 2007. The RWQCB denied Petitioners’ request
for administrative subpoenas, quashed Petitioners’ proper and valid notices of deposition, and

1 issued an order which purported to prohibit Petitioners from conducting any further discovery
2 of RWQCB staff on issues related to the issuance of their CDOs and/or CAOs in violation of
3 *Government Code* §§11450.20(a) and 11190. The RWQCB has no authority to issue such an
4 order and Petitioners contend that the RWQCB is required to comply with Petitioners'
5 reasonable and proper discovery requests and otherwise operate in accordance with the
6 provisions of the *California Government Code*, or provide legal authority which exempts them
7 from those requirements intended for the protection of Petitioners.

8 9 **IV. THE ACTIONS OF THE RWQCB VIOLATED PETITIONERS' RIGHT TO PRIVACY.**

10 The right to privacy, protected by the Federal and California Constitution, grants
11 Petitioners the right to make intimate personal decisions and conduct personal activities without
12 observation, intrusion, or interference from any other person or entity (*Hill v. National*
13 *Collegiate Athletic Association* (1994) 7 Cal.4th 1, 35). The RWQCB enforcement actions
14 invade Petitioners' and their tenants' rights to privacy by unreasonably requiring the property
15 owners to notify the RWQCB in writing of the "name of any new occupant of the site within 30
16 days after the new occupant takes occupancy". The RWQCB's enforcement actions do not
17 justify such an invasion into Petitioners' privacy and Petitioners contend that such an order is
18 violative of their constitutional right to privacy in their homes.

19 20 **V. THE RWQCB'S ISSUANCE OF CDOs AGAINST PETITIONERS WAS ARBITRARY AND CAPRICIOUS IN THAT THE CDOs SEEK TO EXACT AN IMPOSSIBILITY FROM PETITIONERS.**

21 22 **A. The RWQCB Has Subjected the Targeted Citizens of Los Osos to An Arbitrary Compliance Date Which They Have Absolutely No Authority To Control or Ability To Ensure Achievement.**

23
24 In all cases, agency action that is found to be arbitrary, capricious, an abuse of discretion,
25 or otherwise not in accordance with the law is unlawful and will be set aside (*Citizens to*
26 *Preserve Overton Park, Inc. v. Volpe* (1971) 401 U.S. 402, 413-414).

27 The attempt to reach an agreement on the design, financing and construction of a
28 wastewater collection and treatment center in Los Osos has admittedly been a long and arduous

1 process. The frustration has led the RWQCB to take these arbitrary and capricious punitive
2 measures against individual citizens of Los Osos. The RWQCB has ordered the issuance of
3 CDOs against Petitioners, and required that all property owners have their septic systems
4 connected to the anticipated Los Osos city sewage treatment facility by January 1, 2011, and that
5 all discharges from individual septic tanks cease as of that date. If the sewage treatment facility
6 is not built by that date (and there is no guarantee, or even evidence to show, that it will be)
7 Petitioners will be subject to exorbitant penalties and fines under the CDOs. CDOs are an
8 improper enforcement vehicle for alleged violations of the Los Osos/Baywood Park Prohibition
9 Zone because there is nothing any of the Petitioners can legally do to ensure construction,
10 completion and connection to a sewer system estimated at well over \$100 million dollars.

11 Petitioners, as individual property owners and residents of Los Osos, have absolutely no
12 ability or authority to ensure completion of the city's planned sewage treatment facility or
13 compliance with the RWQCB's orders by that date. Yet, by issuance of the CDOs, the RWQCB
14 has given themselves the authority to enforce fines against Petitioners of up to \$5,000 per day
15 until the sewage treatment facility is completed and Petitioners have connected to it. The
16 arbitrary and capricious actions by the RWQCB, which lack evidentiary support as discussed
17 below, have unjustly and selectively penalized Petitioners for conditions beyond their control.

18 The actions of the RWQCB are arbitrary and capricious because the demands of the
19 CDOs attempt to exact an impossibility from Petitioners and their terms simply cannot be met
20 by these 45 individuals without vacating their homes, businesses, and community. The
21 individual residents and property owners of Los Osos should not be held accountable or
22 subjected to punitive enforcement actions for the failure of the County to build and construct a
23 wastewater collection and treatment plant. While the RWQCB claims that their only motive is
24 protection of the groundwater in Los Osos, the RWQCB simultaneously insists on threatening
25 and issuing orders against Petitioners who have no control over construction of a new sewer
26 system. These arbitrary and capricious acts, which bear no relation to improving the quality of
27 water in Los Osos, provide proof of the RWQCB's ulterior motives.

28 ///

1 **B. The RWQCB Has Not Provided Any Evidence Of Any Violation By**
2 **Any Individual Property Owner Or Individual Septic System.**

3 The RWQCB has failed to provide any admissible evidence to support their claims that
4 Petitioners have discharged or are discharging waste in violation of the Water Basin Plan or
5 Porter-Cologne Act. With regard to the *actual scientific evidence* provided in support of the
6 contention that the septic tanks of Petitioners CHARLES E. WILKERSON and NORMA
7 WILKERSON have discharged in violation of Resolution 83-13, Petitioners contend that there
8 is none. The list of evidence submitted by the Prosecution Team admits that the RWQCB relied
9 on general studies rather than measurements of each individual tank, as no individual tanks have
10 ever been tested. CDOs and CAOs were not intended to be used as an enforcement mechanism
11 absent a showing that each individual's system is actually discharging in violation of Resolution
12 83-13. *Water Code* §13280, dealing specifically with individual disposal systems, states:

13 “A determination that discharge of waste from existing or new
14 individual disposal systems or from community collection and
15 disposal systems which utilize subsurface disposal should not be
16 permitted *shall be supported by substantial evidence in the*
17 *record that discharge of waste from such disposal system will*
 result in violation of water quality objectives, will impair
 present or future beneficial uses of water, will cause pollution,
 nuisance, or contamination, or will unreasonably degrade the
 quality of any waters of the state.”

18 The Prosecution Team's evidence against each individual homeowner and resident of Los
19 Osos consisted of pointing to a map to show that the Petitioner owned property within the
20 Prohibition Zone. The mere location of Petitioners' properties was considered sufficient
21 evidence for issuance of a CDO. Petitioners contend that the RWQCB has failed entirely to
22 meet its burden under *Water Code* §13280 to provide “substantial evidence in the record” of an
23 illegal discharge by Petitioners CHARLES E. and NORMA WILKERSON. Rather, the
24 RWQCB has provided no evidence that Petitioners have or are discharging in violation of water
25 quality objectives, much less substantial evidence as required by the *Water Code*. The
26 Prosecution Team produced no evidence of discharges on individual properties, and therefore
27 the conclusion of the RWQCB that Petitioners have discharged in violation of Resolution 83-13
28 is arbitrary and capricious as entirely unsupported by the evidence.

1 Most of the septic tanks currently in use in Los Osos/Baywood Park Prohibition Zone are
2 approved septic systems that were placed in use prior to the enactment of Resolution 83-13. At
3 no time has the RWQCB, the County of San Luis Obispo, or the LOCSD ever inspected the
4 septic systems to determine whether they are faulty or whether they are working as they are
5 designed to work. If Petitioners' individual septic tanks are working appropriately, Petitioners
6 are not discharging waste into the groundwater, but rather, they are discharging waste into their
7 septic tanks. The septic tanks are designed to cause the waste to be reduced to molecules, and
8 those molecules are then discharged into the leach fields in the upper aquifer for additional
9 natural treatment.

10 If the septic systems are working as designed and permitted, then they cannot be the
11 subject of an enforcement action. Yet, the RWQCB initiated this action and made their rulings
12 without making any specific finding of any illegal discharges by Petitioners, and without
13 determining whether the septic systems are working as designed and permitted by the County
14 or whether the environmental characteristics - depth of aquifer, proximity of leach field to
15 streams, proximity of leach field to other leach fields, etc. - of any individual parcel lead to the
16 need to revoke the permit for that parcel's septic system and to require pumping or other more
17 drastic enforcement measures.

18 It is clear that the RWQCB has completely and utterly failed to develop any scientific
19 evidence with regard to individual properties. In the more than twenty years since Resolution
20 83-13 was adopted, the RWQCB has never collected site-specific or property-specific
21 information, but rather, has prosecuted Petitioners, not on the required site-specific information,
22 but as an *en masse* prosecution with the presumption that the Prosecution Team's evidence
23 applies equally to every property targeted for prosecution. In addition, the Prosecution Team's
24 evidence was taken from drinking water wells which are constructed in an entirely different
25 fashion than septic tanks, and which were admittedly unpermitted and illegal. Without actually
26 studying the individual properties, the RWQCB must have prosecuted Petitioners by implication
27 when it made its orders, actions, and rulings at the May hearings. The RWQCB has failed to
28 prove that each individual has discharged in violation of a valid prohibition or that each system

1 is causing harm to the state's waters. The issuance of enforcement orders as onerous as CDOs
2 based on these extremely questionable samples used by implication against Petitioners is
3 arbitrary, capricious, and nonsensical. This further disproves the RWQCB's claim that the
4 purpose of the CDOs is the actual protection of groundwater and instead supports the notion of
5 improperly motivated RWQCB actions.

6 **C. The CDOs Issued Against Petitioners Were An Improper Remedy With**
7 **Extremely Inappropriate Ramifications.**

8 All of the current and proposed CDO recipients have done nothing wrong. They simply
9 live in Los Osos. It was unfair to place these homeowners through this abusive process which
10 does not correlate to protection of the water basin. The RWQCB enforcement actions against
11 Petitioners were punitive, unsupported by relevant evidence, and bore no actual nexus to
12 improving the water in Los Osos.

13 The RWQCB insists on going beyond what is practical and possible, and has issued
14 orders requiring cessation of all discharges by January 1, 2011. Such orders do not have
15 anything to do with improving the quality of water, and instead merely serve to punish
16 Petitioners for the past failure of the LOCSD and County. If the community vote fails or the
17 County does not act in accordance with the time lines and mandates set forth in the issued CDOs
18 and CAOs, it is these 45 homeowners who will be compelled to vacate their homes and
19 businesses due to the exorbitant fines attached to the RWQCB's orders. The CDOs impose
20 drastic ramifications on these innocent Petitioners, and threaten:

21 "6. If, in the opinion of the Executive Officer, the Discharger
22 fails to comply with any provision of this Order, then the
23 Executive Director may apply to the Attorney General for
judicial enforcement or issue a complaint for Administrative
Civil Liability.

24 FAILURE TO COMPLY WITH PROVISIONS OF THIS
25 ORDER MAY SUBJECT THE DISCHARGER TO FURTHER
26 ENFORCEMENT ACTION INCLUDING ASSESSMENT OF
27 CIVIL LIABILITY UNDER SECTIONS 13268 OR 13350 OF
THE WATER CODE AND REFERRAL TO THE ATTORNEY
GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR
28 CRIMINAL LIABILITY."

1 Because it is highly unlikely that a Los Osos wastewater collection and treatment plant
2 will be completed by the RWQCB's January 1, 2011 deadline, the maximum allowable fines,
3 if enforced, will total \$1.825 million dollars a year for each individual homeowner. In addition,
4 the RWQCB has continually threatened Petitioners with retroactive fines dating back to the
5 enactment of the Prohibition Zone, and most recently, in their letter regarding the status of future
6 enforcement, stated:

7 "Please be advised that all discharges from septic systems within
8 the Los Osos/Baywood Park Prohibition Zone have been and are
9 still illegal, and you are exposed to accumulation of daily
10 penalties while such discharges continue. If the County's efforts
11 to develop a community wastewater treatment and collection
12 system are not successful, then you face the prospect of
enforcement actions, such as the cease and desist orders
described in our march 21, 2007 Notice of Violation, or the
cleanup and abatement orders described in our staff report for
the May 10, 2007 Water Board meeting."

13 These fines are an example of the inappropriate ramifications of the RWQCB's abusive
14 use of CDOs and CAOs in this enforcement action. Petitioners are incapable of paying the fines
15 pursuant to the CDOs, and will be forced to vacate their houses in lieu of the threat of \$1.825
16 million in fines each year. Clearly fines of this magnitude were not intended to be enforced
17 against individual homeowners with no power to remedy the purported illegal discharges of the
18 town of Los Osos.

19 Further, pursuant to *Government Code* section 4477, any person subject to a CDO issued
20 pursuant to *Water Code* section 13301 is prohibited from entering into any contract with the
21 state. The CDOs may cause Petitioners loss of employment and work as they will be barred
22 from providing goods and services to the State of California.

23 In addition, the RWQCB has absolutely no rational or acceptable basis for holding
24 Petitioners CHARLES E. and NORMA WILKERSON to the requirements, standards and
25 penalties of their CDOs while simultaneously deciding not to proceed with enforcement against
26 the remaining residents and property owners of Los Osos.

27 ///

28 ///

1 **D. The RWQCB Has Failed To Consider Reasonable Enforcement Alternatives**
2 **In Violation of the *Water Code*, Assembly Bill 2701, and Internal RWQCB**
3 **Regulations.**

4 The RWQCB has failed and refused to consider reasonable alternatives to the issuance
5 of CDOs and CAOs in their enforcement actions against individuals. Although *Water Code*
6 §13301.1 requires the RWQCB to provide “all possible assistance in making available current
7 information on successful and economic water quality control programs”, the RWQCB has
8 refused to consider any and all alternatives presented by Petitioners.

9 The RWQCB has also acted in bad faith and with unclean hands in prosecuting this action
10 in that the enforcement actions were initiated in violation of the intent of AB 2701. Petitioners
11 contend that the administrative record will show that Assemblyman Sam Blakeslee, the LOCSD,
12 and the RWQCB negotiated an agreement in October 2005, whereby the RWQCB agreed to
13 stand down and allow the process of AB 2701 to proceed. Nevertheless, the RWQCB has failed
14 and refused to “stand down” or take into consideration less onerous and punitive remedies
15 available, as required by AB 2701, or to allow remedies available through allowing AB 2701 to
16 progress as intended.

17 The issuance of CDOs and CAOs in this instance also violates the principles of
18 environmental justice as set forth in *Government Code* §65040.12(e), which provides for “the
19 fair treatment of people of all races, cultures, and incomes with respect to the development,
20 adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

21 The RWQCB’s actions are arbitrary and capricious in that they are mandating an equally
22 illegal wastewater collection and treatment system. Resolution 83-13, as interpreted by the
23 RWQCB, prohibits any and all discharges from individual or community wastewater collection
24 and treatment systems. Thus, the community system mandated by Petitioners’ CDOs is equally
25 violative of the RWQCB’s own Resolution 83-13. In refusing to consider any compliance
26 alternatives and demanding that an equally illegal system be put into place by Petitioners, the
27 RWQCB is acting in violation of *Water Code* §13360(a), which prohibits specification of the
28 specific manner in which compliance may be had.

1
2 **VI. THE RWQCB's ENTIRE ENFORCEMENT PROCESS HAS BEEN**
3 **IMPROPERLY MOTIVATED IN AN ATTEMPT TO INFLUENCE THE**
4 **REQUIRED BOND MEASURE VOTE UNDER PROPOSITION 218.**

5 Assembly Bill 2701 introduced February 24, 2006 and signed into law on September 20,
6 2006 gave the County of San Luis Obispo control over this project. However, instead of waiting
7 for the vote and for the County to proceed with the community wastewater collection and
8 treatment system, the RWQCB has proceeded with abusive, random enforcement procedures by
9 issuance of CDOs and CAOs against individuals. The RWQCB has initiated this enforcement
10 action as a blatant form of electioneering, designed to confuse and frighten the citizenry, and the
11 issuance and continued threat of issuance of CDOs and CAOs against individuals in an attempt
12 to force the required assessment vote constitutes illegal electioneering practices. *Elections Code*
13 §18540(a) provides:

14 “(a) Every person who makes use of or threatens to make use of
15 any force, violence, or tactic of coercion or intimidation, to
16 induce or compel any other person to vote or refrain from voting
17 at any election or to vote or refrain from voting for any
18 particular person or measure at any election, or because any
19 person voted or refrained from voting at any election or voted or
20 refrained from voting for any particular person or measure at
21 any election is guilty of a felony punishable by imprisonment in
22 the state prison for 16 months or two or three years.”

23 In addition, *Elections Code* §18501 provides:

24 “Any public official who knowingly violates any of the
25 provisions of this chapter, and thereby aids in any way the
26 illegal casting or attempting to cast a vote, or who connives to
27 nullify any of the provisions of this chapter in order that fraud
28 may be perpetrated, shall forever be disqualified from holding
office in this state and upon conviction shall be sentenced to a
state prison for 16 months or two or three years.”

Enforcement of the CDOs issued against Petitioners is specifically conditioned on the
approval and construction of a community sewer system pursuant to AB 2701. Although
individual residents and property owners of Los Osos have no authority or ability to construct
a sewer system, the enforcement of their CDOs and CAOs mandates that a vote be passed, and
that a sewer system be put into place by January 1, 2011, or any and all alleged discharges from

1 their individual well sites will be prohibited, and the entire town of Los Osos will be required
2 to vacate their homes, businesses, and community. The Prosecution Team stated in their
3 December 1, 2006 rebuttal that:

4 “The modified CDO makes clear that **so long as the**
5 **community wastewater system contemplated by AB 2701 is**
6 **moving forward, the respondent is not required to cease use**
7 **of the septic system for the Respondent’s site.** (see, ¶ A.1)
8 There is no requirement in the modified CDO that the
9 community wastewater system be completed by a particular
10 date. That was the intent of the proposed CDO but the
11 Prosecution Team believes the modified CDO is clear in that
12 regard” (Emphasis added).

13 The Prosecution Team also admitted in their published December 6, 2006 proposed
14 settlement agreement summary that, “This discharge cessation date takes effect either because
15 the County fails to approve a benefits assessment by July 1, 2008, or because during the process
16 of designing and building the community wastewater project, there is a material cessation (i.e.,
17 work stoppage) of the project, as determined by the Water Board.” And most recently, the
18 RWQCB confessed in its June 1, 2007 letter regarding status of future enforcement that “Board
19 members cautioned that failure of the County process would most likely lead to continued
20 enforcement.”

21 Petitioners cannot control the approval of the 218 vote by July 1, 2008, and Petitioners
22 cannot control the financing or construction of a community system by January 1, 2011 as
23 required under the CDOs and CAOs. Petitioners cannot install an alternative individual site
24 specific system as the RWQCB will not approve any system other than the community system
25 authorized under AB 2701 in violation of *Water Code* §13360(a), which prohibits regional
26 boards from specifying the design, location, type or manner in which compliance may be had.
27 Therefore, Petitioners and their fellow targeted neighbors are left with no option but to ensure
28 that the “community wastewater system contemplated by AB 2701 is moving forward” and
29 passes, or be forced to move from their residences and businesses as of January 1, 2011 if the
30 community wastewater and treatment system is not completed by the County. In the order
31 issuing CDOs, which can be enforced criminally or civilly against Petitioners, the RWQCB
32 required the unattainable. Since Petitioners can do absolutely nothing to ensure compliance with

1 their CDOs, the RWQCB must have justified them by ulterior motives, namely, approval of the
2 required bond measure vote under Proposition 218.

3
4 **VII. THE RWQCB DOES NOT HAVE THE AUTHORITY TO ISSUE CDOs AGAINST**
5 **THESE BONAFIDE PURCHASERS OF PROPERTY FOR VALUE, WITH**
6 **PERMITTED SEWAGE DISPOSAL SYSTEMS EXISTING PRIOR TO THE**
7 **ADOPTION OF RESOLUTION 83-13.**

8 **A. Resolution 83-13 Only Prohibited Discharges From Any Additional**
9 **Individual or Community Sewage Systems.**

10 To Petitioners knowledge, all of the targeted individuals' homes were built before 1988
11 and are not any of the additional units subject to Resolution 83-13. Petitioners were not advised
12 at any time prior to the purchase of their homes that the septic systems wee allegedly illegal and
13 that their discontinued use would be demanded in lieu of the CDO's exorbitant fines. In 1983,
14 the RWQCB adopted Resolution 83-13 which states:

15 "Failure to comply with any of the compliance dates established
16 by Resolution 83-13 will prompt a Regional Board hearing at
17 the earliest possible date to consider adoption of an immediate
18 prohibition of discharge from *additional* individual and
19 community sewage disposal systems.

20 Discharges from individual or community systems within
21 the prohibition area *in excess of an additional 1150 housing*
22 *units* (or equivalent) or prohibited, commencing with the date of
23 State Water Resources Control Board approval...

24 BE IT FURTHER RESOLVED, that if the Board holds
25 a hearing and adopts an immediate prohibition as described
26 above, the prohibition is effective as of the date the Regional
27 Water Quality Control Board adopts a prohibition of discharge
28 from *additional individual and community sewage disposal*
systems." (Emphasis added.)

After the authorized additional 1,150 housing units were built, the moratorium in the
prohibition zone went into effect. Petitioners bought their houses with absolutely no notice of
any requirements or duties which would arise from Resolution 83-13. Petitioners have recently
pumped their septic tanks and have evidence of a properly functioning system. The legality of
their houses and permitted sewage systems should serve to "grandfather" the Petitioners'

1 property into compliance, because the properties and systems were considered in compliance at
2 the time Petitioners purchased them and at the time Resolution 83-13 was enacted. To require
3 expensive alterations, repairs, and/or the construction of new sewage systems on homes that
4 were fully legally permitted at the time of purchase creates an unfair economic advantage and
5 constituted an unconstitutional taking without just compensation.

6 As stated above, Resolution 83-13 prohibited the discharge from any *additional*
7 individual or community disposal systems, and enforcement actions against Petitioners amounts
8 to inequitable enforcement of the law. The RWQCB does not have the authority to issue CDOs
9 or CAOs against property owners whose legally permitted and properly working sewage disposal
10 systems existed prior to the adoption of Resolution 83-13 and the waste discharge prohibition
11 of the Water Basin Plan.

12 **B. The RWQCB Has Improperly Denied Challenges To The Water Basin Plan**
13 **and Resolution 83-13, Which Are Now Ripe For Review.**

14 The RWQCB has improperly disallowed any consideration or evidence concerning the
15 invalidity of the Prohibition Zone or the prohibition against discharges. Absent a challenge
16 within 30 days of its adoption, Resolution 83-13 could not be successfully challenged until it was
17 enforced under *Water Code* § 13330 then in effect. Although Section 13330 was amended in
18 1992 to limit all challenges to Water Board decisions to be made within 30 days, the law in
19 effect in 1983 provided:

20 "Failure to file such action shall not preclude a party from
21 challenging the reasonableness and validity of a decision or
22 order of a regional board or the state board in any judicial
23 proceedings brought to enforce such decision or order or for
24 other civil remedies".

25 Now that the Water Board seeks to enforce Resolution 83-13 against these individuals,
26 Petitioners submit the enforcement of Resolution 83-13 is now ripe for review. However, the
27 RWQCB has refused, in every step of this long history, to hear arguments or challenges to the
28 legality of Resolution 83-13 or the Water Basin Plan.

Petitioners also contend that the RWQCB enforcement actions, which seek to enforce the

1 prohibition on past alleged illegal discharges dating back to 1988, are barred by laches and
2 estoppel. The RWQCB has allowed Petitioners to purchase and live in their homes with no
3 indication of enforcement. Now, the RWQCB is attempting to enforce the decades old
4 resolution upon Petitioners to the detriment of every Los Osos property owner or resident, and
5 has threatened retroactive fines for the years of alleged non-compliance. The RWQCB's
6 enforcement actions against individuals in Los Osos are an attempt to scare the citizenry into
7 compelling a favorable 218 bond measure vote, and constitute illegal, arbitrary and capricious
8 actions.

9
10 **VIII. THE RWQCB ENFORCEMENT ACTIONS AGAINST INNOCENT INDIVIDUAL**
11 **PROPERTY OWNERS AND RESIDENTS OF THE LOS OSOS/BAYWOOD**
12 **PARK PROHIBITION ZONE IS AN ILLEGAL, UNNECESSARY, AND**
13 **UNPRECEDENTED ACTION WHICH IS OUTSIDE THE AUTHORITY OF THE**
14 **RWQCB.**

15 CDOs and CAOs were not intended to be used as an enforcement vehicle against all
16 individuals in an community, and the RWQCB does not have the authority to issue CDOs and/or
17 CAOs against property owners and residents of Los Osos in their individual capacity under these
18 circumstances. Petitioners have searched all published California case law on the subject for any
19 examples of CDOs or CAOs issued against persons in their individual capacity, and contend that
20 there is none. Rather, CDOs and CAOs in the past have been issued solely against commercial
21 polluters.

22 The enforcement actions violate *Water Code* §13351 in that the RWQCB has failed to
23 take into consideration, with regard to any individual discharger, the "nature, circumstances,
24 extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup
25 or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability
26 to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken,
27 any prior history of violation, and such other matters as justice may require." CDOs are
28 improper under the circumstances because there is nothing any of the Petitioners can legally do
to ensure construction, completion, and connection to a community sewer system estimated at
well over \$100 million. In addition, Petitioners are incapable of paying the mandatory and

1 potential fines pursuant to the CDOs, and will be forced to vacate their homes and businesses
2 in lieu of \$1.825 million in fines each year. Petitioners have faithfully had their septic tanks
3 pumped and do not have any prior history of violation other than living in their homes. The
4 nature, circumstances, extent and gravity of the violations, inability to cleanup or abate such
5 alleged discharges, inability of the discharger to pay and continue in business, and voluntary
6 cleanup efforts taken by Petitioners, all point toward the arbitrary, capricious and ridiculous
7 actions of the RWQCB.

8
9 **IX. THE RWQCB HAS FAILED TO MEET ITS MANDATORY DUTY TO ASSIST**
10 **PETITIONERS WITH THE HIGH COSTS OF COMPLYING WITH THEIR**
11 **REGULATIONS OR ANY ISSUED CEASE AND DESIST ORDER.**

12 The RWQCB has failed and refused to meet its burden to render assistance to persons
13 against whom a CDO or CAO is issued pursuant to *Water Code* §§13301.1 and 13291.35. *Water*
14 *Code* §13301.1 provides:

15 “The regional board shall render to persons against whom a cease
16 and desist order is issued pursuant to Section 13301 all possible
17 assistance in making available current information on successful
18 and economic water quality control programs, as such information
19 is developed by the state board pursuant to Section 13167, and
20 information and assistance in applying for federal and state funds
21 necessary to comply with the cease and desist order.”

22 Further, the CDOs and other enforcement actions of the RWQCB violate *Water Code*
23 §13291.5, which states:

24 “It is the intent of the Legislature to assist private property owners
25 with existing systems who incur costs as a result of the
26 implementation of the regulations established under this section by
27 encouraging the state board to make loans under Chapter 6.5
28 (commencing with Section 13475) to local agencies to assist private
property owners whose cost of compliance with these regulations
exceeds one-half of one percent of the current assessed value of the
property on which the onsite sewage system is located.”

29 Petitioners have, on numerous occasions, specifically requested information from the
30 RWQCB regarding successful and economic alternatives for compliance in the event a
31 community system is not built by the CDO’s arbitrary deadline of January 1, 2011. The

1 RWQCB, in bad faith, has refused to provide any guidance or assistance regarding available
2 alternatives to coming into compliance with the discharge requirements short of ceasing all uses
3 of Petitioners' residential and commercial properties and moving out of the community. In
4 denying Petitioners the opportunity to discuss compliance alternatives other than the community
5 wastewater collection and treatment system contemplated by AB 2701, the RWQCB improperly
6 relies on *Water Code* §13360(a), which states:

7 "No waste discharge requirement or other order of a regional board
8 or the state board or decree of a court issued under this division
9 shall specify the design, location, type of construction, or particular
10 manner in which compliance may be had with that requirement,
11 order, or decree, and the person so ordered shall be permitted to
12 comply with the order in any lawful manner."

13 The RWQCB has, instead, offered no assistance and has forbidden and denied each and
14 every proposal for compliance brought forth by Petitioners to date. The refusal to discuss or
15 allow alternative options for compliance in the event the County cannot construct a system
16 through the AB 2701 process violates *Water Code* §13360(a). In addition, the RWQCB's
17 improper use of the language of §13360(a) to avert their duty to provide assistance pursuant to
18 *Water Code* §13301 is arbitrary, capricious, and an intentional bad faith violation of Petitioners'
19 rights.

20 The RWQCB has further exacerbated the situation by failing to comply with their own
21 internal regulations. The RWQCB, through a Memorandum of Understanding, required the
22 County of San Luis Obispo to implement both a Septic Management Plan and a Water
23 Conservation Plan. These actions, if properly taken, would have provided substantial
24 improvements to the quality of water in the water basin while a community wastewater
25 collection and treatment system was being designed and built. The County and RWQCB failed
26 to fulfill the responsibilities under the Memorandum of Understanding to the detriment of
27 Petitioners. The RWQCB failed to mitigate the damages to the water basin, and instead,
28 exacerbated any ability to meet their discharge prohibitions by, among other things, revoking
funding to assist in construction of a community wastewater treatment and collection system and
imposition of additional unjustified fines.

1 The RWQCB has also failed to follow their own Water Quality Enforcement Policy by
2 (1) failing to begin with lower levels of enforcement against individuals in Los Osos; (2)
3 completely failing to evaluate the economic impacts of these proceedings or other forms of
4 enforcement; and (3) wrongfully issuing CDOs and/or CAOs against individual homeowners as
5 they are clearly designed and intended for industrial and commercial dischargers.
6
7

8 CONCLUSION

9 Petitioners contend that the entire enforcement process conducted by the RWQCB is
10 improper and illegal, and as such, the CDOs which resulted from such illegal enforcement
11 actions should be dismissed. Petitioners CHARLES E. and NORMA WILKERSON should not
12 remain subjected to the onerous conditions of their CDOs while the remaining members of the
13 Los Osos community remain unaffected and unrestricted by the RWQCB's orders. Further, the
14 orders issued during the May 2007 hearings, and any orders issued during previous hearings, are
15 unenforceable due to the failure by the RWQCB to notify Petitioners of their right to appeal the
16 decision to the State Board, as required under statutory law, including the California Code of
17 Regulations §2068. Petitioners have requested that the administrative record be produced and
18 made available for their review, and have sent subsequent additional requests for the same. As
19 of yet, no administrative record has been produced. Thus, in addition to the arguments set forth
20 herein, and the exhibits made a part hereof, Petitioners request the opportunity to supplement this
21 appeal with any evidence, arguments, or authority which arise after production of the
22 administrative record.

23 Dated: June 7, 2007

24 SULLIVAN & ASSOCIATES
25 A Law Corporation

26 By: 

27 Emily Mouton

28 Attorneys for Petitioners